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THE

TENURES OF KENT.

BY

CHARLES I. ELTON,

LATE FELLOW OF QUEEN'S COLLEGE, OXFORD; AND OF
LINCOLN'S INN, BARRISTER-AT-LAW.

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EARL STANHOPE, D.C.L.,

PRESIDENT OF THE SOCIETY OF ANTIQUARIES.

ADVERTISEMENT.

THE writer has endeavoured, in a short review of the history of the tenures of Kent, to shew how much less land in the county is of the nature of gavelkind, than has been commonly presumed. Much assistance has been derived from the unpublished collections of the chief Kentish writers, as Lambarde, Philipot, and Hasted, now in the British Museum, as well as from the official records. The number of cases continually increases in Kent, in which a doubt as to the tenure prevents any free dealing with the land. In such cases, it is hoped that this short handbook may be of some practical utility.

2, NEW SQUARE, LINCOLN'S INN, 1866.

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THE TENURES OF KENT.

CHAPTER I.

The Limits of Gavelkind in Kent.

Uncertainty in Kent as to what lands are held in Gavelkind.—Antiquity of the law of real property in this County.—The law of Gavelkind a fragment of the old Common Law.—Expense and difficulty caused by uncertainty as to Tenure.—Much land supposed wrongly to be Gavelkind.—No lapse of time can alter its nature.—General rules as to Kentish Tenures.—What was not Gavelkind at the Conquest cannot be now dealt with as such.—Exception to this rule.—What was Gavelkind at the Conquest is so now.—Presumption that *primâ facie* all lands in the County are of this nature.—Extent of lands which were never Gavelkind.—Lists of these lands taken in each reign while the Feudal System remained.—These records still preserved.—Uncertainty as to Tenure now removed by the publication of the records.—Distinction between superior and inferior Tenures.—Spiritual Tenure of free alms or Francalmoigne.—Military Tenures.—Barony.—Knight-service.—Serjeanty.—Castleguard.—Military Tenants of Ancient Demesne.—Inferior Tenures.—Ancient Socage or Gavelkind.—Socage which is not Gavelkind.—Copyhold.—Petty Serjeanty.—Burgage.—Gavelkind Tenants of Ancient Demesne.—Effect of the dissolution of Monasteries.—Lands held in *ancient* Francalmoigne are not now Gavelkind.—Lands held by an *ancient* military service are not Gavelkind.—Effect of the abolition of Feudal Tenures.—Tenure of wastes and common lands.—Demesne lands.—Advowsons.—Some are Gavelkind.—Manors without demesne.

THERE are few subjects of equal importance on which so little has been published—for much has been written at various times—as that of the Tenures of Kent. Yet an accurate knowledge of them is equally valuable to the lawyers and the landowners of that county, and to those who study the old law generally.

Dividing the real property of Kent into two classes, the larger including all that is gavelkind, the smaller all that is not, we find that several books have been written about the former, and hardly anything about the latter. In most parts of England no great accuracy of knowledge concerning the once important theory of tenures has been requisite since the abolition of the feudal system. But in Kent land can hardly be dealt with safely, no title can be made perfectly clear, without some knowledge of the law respecting tenures, many of which are obsolete.

The reason for this may be found in the law respecting the tenure and customs of gavelkind. Nothing is more clearly established than the rule that lands which were originally held in socage are gavelkind, and those alone. It is true that in cases of doubt a common presumption is applied: all lands in Kent are presumed to be gavelkind until the contrary is proved. But this presumption does not dispose of the difficulty, although at one time it was very useful.

An extract from the "First Report of the Real Property Commission" will explain this to a great extent.

Mr. Bell, K.C., a high authority upon all questions of Kentish law, was asked this question:—

"Is there any prevailing uncertainty as to what estates are subject to gavelkind or not?"

He answered, "I think it very probable that questions may arise upon the subject; you find it generally laid down that all lands in Kent are gavelkind, until the contrary is proved, and it is said that such proofs cannot be given. I bought an estate the other day, where it was perfectly clear it was not gavelkind. I have purchased three estates in Kent, where I am perfectly satisfied, that none of them are of gavelkind tenure; and now that the records are thrown open by the Parliamentary Com-

missioners, I have no doubt many more such questions will be found to arise."

"Are there not some estates in Kent that never have been gavelkind; that have been held *in capite ?*"

"I have no doubt there are. But there is one description of land upon which the question has arisen, viz. monastery lands that were held not in gavelkind, but in free alms. I do not know whether there are many lands that have been held *in capite*, but there are many that have been monastery lands."

There are several things in this evidence specially to be remarked.

First, that at the time it was said that proofs to rebut the presumption of gavelkind could not be produced, but that this was not true according to Mr. Bell's own experience.

Secondly, that he anticipated the rising of many questions, and the finding of many such proofs, when the records should be fully opened to the public. This has been the case to a remarkable extent. Several questions have arisen, and there is a facility now which never existed before for solving them with readiness.

For the tenure of every estate in the county is recorded so exactly in a series of records from the Conquest to modern times, that the limits of gavelkind tenure may be defined in each parish, and in each manor. It may be asked, why has not all this been done long ago? and the answer is not difficult to find.

Until the abolition of the feudal tenures it was necessary to record what land was held by the Church in free alms or by military service, and from what lands in the ownership of laymen the feudal perquisites were due to the king and other lords. This was continually done throughout the whole county, not only by the

royal escheators and feodaries, but by means of sheriffs' and coroners' inquisitions, and especially of the inquisitions *post mortem*. From these last records we get the verdict of a jury in each case summoned after the death of an owner of land, who declared upon their oath all the particulars relating to the tenure and the amount of his lands, the services by which they were held, the name, age, &c. of his heir or heirs, and many other important items; their verdict was returned to the Court of Chancery, the source of the writ upon which it was taken, but copies were also returned to the Exchequer in most cases; these records, in the words of a lately published and valuable work, brought out by direction of the Master of the Rolls, (the *Calendarium Genealogicum*, edited by the Secretary of the Public Record Office,) "are of such superior import, that they have been styled the 'Proprietary Map of England,' and for genealogical, topographical, or biographical purposes, are not surpassed by any other class of our ancient records."

They are especially valuable as regards Kent, for by means of them most questions of tenure in the county could be settled. They contain the history of each estate in Kent, from the reign of Henry III. to that of Charles II.

But they are by no means the only source of our information. Omitting for the present a consideration of such valuable records as "Domesday Book" and the *Testa de Nevil*, we know that it was usual to compile an exact account of all the military lands in each county for the use of the officers who collected the feudal dues.

Such a report, based upon those earlier authorities, was made for Kent in 20 Edw. III., being "The Book of Aid," continually quoted by all the historians of the

county. This book was used in subsequent reigns as the standard or canon for distinguishing ancient gavelkind from ancient military lands; and it was the business of the king's 'feodaries' to note all changes of name, all divisions of ownership and services in the lands therein described. This was done in a specially accurate manner by Cyriac or Shidrach Petit, a well-known authority in Kent, in the reign of Henry VIII., by means of his own researches, and the accumulated labours of his predecessors in office. The book compiled by him, which is a record of authority, not to be refused in any court, was used to some extent by the chief writers on Kent, as Hasted, Lambarde, and Philipot. In some MS. memoranda by the first-named author, it is cited as one of the books necessary for a knowledge of the tenure of each estate in Kent.

But when the feudal system was abolished it became unnecessary, through the greater part of England, to continue this series of records. It was apparently necessary for Kent that something should be substituted for them, which should still record the limits of each tenure, and the total amount of gavelkind; it may be that a mere publication of the former lists would have sufficed to prevent confusion; but neither of these courses was followed. The consequence has been that for a long time the tradition of these boundaries has been lost, only to be found again in each case of a dispute with such expense and trouble, that in several instances it has seemed expedient to compromise the matter between all the parties interested, rather than enter on a tedious and doubtful litigation. Had the subject of Kentish tenures been duly investigated, there would have been few disputes, and no necessity for these compromises; which, after all, cannot alter the nature of the land in the face of direct proofs

found afterwards; so that, as regards future owners, the dispute might arise again on any dealing with the property.

Thus we see that the question was settled long ago, and in fact is settled now, though for a time the matter has been in practice neglected. And yet not continuously or systematically neglected; for from time to time these disputes about tenure have come before the courts of law, and whenever this has happened, the old authorities and the old traditions have been sustained and enforced.

It is unfortunate that these cases have either not been reported at all, or only published in a meagre and imperfect form.

The continued litigation (*Noel's Case*) about the manor of Elvyland in Ospring, where it was found that land anciently held by military service, and turned to socage as early as the twelfth century, was not gavelkind, had to be collected piecemeal from the early pleas of the Crown.

The case of *De Bendings* v. *the Prior of Christ Church*, has not yet been published, except in an imperfect and unofficial form; an "apograph" of it having been extracted from the Canterbury archives by Somner. This will be given at length in a later chapter, when it will be seen that a modern decision (*Doe d. Lushington*, v. *Llandaff*) confirms its authority, instead of impairing it, as has been sometimes said.

The important decision respecting the freedom of some ancient demesne (*Humphry* v. *Bathurst*), is reported in the books, but so slightly as to have been of little use; the judgment in *Gouge* v. *Woodin*, so often cited by Robinson, has only been paraphrased in a county history; and the litigation as to ancient military lands, tenure by castle-guard rents, &c. in the case of the Earl of Sussex in 1706

and 1709, has been hitherto unreported, except as to some comparatively unimportant points.

There are many other decisions mentioned in the following chapters, which are most important to the whole county, and to the owners of particular lands, which sometimes from necessity have been either unknown or disregarded of late years.

And now as to what has been written on the subject of gavelkind. Mr. Robinson's learned treatise contains the law on this head, or almost all; but it must be remembered that he confined his attention to gavelkind, and did not attempt to discuss the law of the other tenures in Kent. This will be more fully noticed in another chapter; meanwhile, any one will see its truth who reads his short chapter headed, "What lands in Kent are of the nature of gavelkind[a]." He had several reasons for this: among others, a phrase in the act 18 Hen. VI. c. 2, and the difficulty and expense of searching the records, when he wrote his valuable book; add to this, that till it was written there seems to have been a common idea that gavelkind tenure was much less widely spread, than we now know it to be, in the county. The later editors and commentators on his work have also confined themselves as closely to the subject of gavelkind lands, as this small treatise is meant to be confined to those which have never been of that nature.

The works of Lambarde and Philipot are almost as valuable as the "Treatise on Gavelkind;" the first to the lawyer, "though perhaps too closely confined to the points in the 'Kentish Custumal;'" the latter, both to lawyers and those interested in the family and county history of Kent.

[a] Book i. c. v.

But Lambarde, who possessed immense learning on these points, (in his own words): "As to the feodaries and tenures of land, and such other hidden things, though somewhat might have been severally said concerning them, yet wittingly and without touch leaped over them all."

Moreover, when he wrote the "Perambulation," there was little need of such a discussion, as it was very well known to all the county which land was gavelkind, and which descendible at common law. His collections, however, of notes and extracts relating to Kentish tenures, are still most valuable.

Somner's "Inquiry into Gavelkind" is full of interest and information, but he was no lawyer, and would not engage in anything but a history of gavelkind in early times, avoiding as much as possible all "points of common law."

Nor can we gain any certain guidance from Hasted's "History of Kent," which is useful in a multitude of ways, but deformed by constant inaccuracies in matters of tenure and family history. Thus hitherto there has been no general guide to the lands of Kent which are not gavelkind, except records difficult of access till now, and decisions hardly in any case reported. To provide such guidance would be a lengthy and laborious task, which it is hoped that the following chapters will induce some capable person to undertake.

The chief objection to the practice of treating gavelkind separately, and not as one part of the Kentish system of tenures, has been this; the principle of law, which determines the true extent of each tenure, is obscured, and the rules growing from it become to all appearance mere empirical maxims, based on no perceptible reason.

A few sentences will explain the principle, of which the following chapters are an exposition.

We are compelled to return to the earliest portions of our history to find the true reason for one piece of land being held in gavelkind, while another descends to the eldest son.

Taking a period shortly before the Conquest, we find that the cultivated lands of Kent were of two kinds, allodial and socage. The first was held by the king, the Church, the nobles, and gentry; the rest by farmers and husbandmen. We are now not considering folk-lands, ancient boroughs, socage land leased to the Church, &c., but only considering the broad and general division of the soil. About one-third was allodial, and the rest socage.

All the socage was "gavel-land," in the sense of free-hold, owing rent, and service, but only the superior *villani* or *ceorls* had the privileges which we attach to tenure in gavelkind; but it will be shewn later that within the course of a few reigns after the Conquest the inferior labourers on the demesnes (*bordarii*) received these privileges.

In the eleventh century the system of manors was borrowed, probably from the Normans; since which time we may take another form of division, and say that one part of the county was held in demesne by the lord, and the rest distributed among the socage tenants of the manor.

But on examination it appears that these two modes of division are in reality the same. For the demesnes correspond with the free *allodium*, and the tenemental portions of all the manors with the gavel-land or gafol-land of which we spoke.

So that at the Conquest one-third of the cultivated lands

were held by a tenure superior to socage. In the Conquest the law of real property in Kent was not much altered, a special privilege gained by the early submission of the province. Those who held in socage were allowed to retain their gavelkind liberties.

There was naturally a great change of owners, but it was personal, and the old boundaries of the demesnes and the socage were not disturbed, as may be seen by "Domesday Book."

But the allodial tenures were all made feudal, except where certain monasteries were permitted to retain the old tenure in free alms, or francalmoigne.

Henceforth the king, the Church, the nobles, and gentry, held their manors and demesnes by feudal tenures. Some held in barony, some by knight-service, others by service of castleguard, others by grand serjeanty; and all that owed these services of chivalry are now called in Kent "ancient knight-service land." Manors which were part of the ancient demesne of the Crown in the hands of subjects were equally held by a feudal tenure, except as to their ancient socage portions.

The rule of law has always been that what was then feudal or held in free alms is not gavelkind. But that no encroachments might be made on the lesser tenure, until proof to the contrary is produced, any particular land shall *primâ facie* be taken to have been gavelkind.

The proposition then from which we start upon our enquiry is this. Only those portions of a manor are gavelkind which were anciently held of it in socage. No conversion of a higher tenure into socage can impose gavelkind qualities. Such conversions came about in many ways; for instance, the services of a military tenant were changed to those of a petty serjeanty, a tenant in free

alms alienated for a fee-farm rent, a new grant of the king was made *tenendum* in socage, or the same thing was done by a special act of Parliament; lastly, when the feudal tenures were abolished, all the military lands came to be held in free and common socage. But none of these changes affected the boundaries of gavelkind.

Therefore, in brief, the manors and demesne lands proved to have been held from the first by a tenure superior to socage are not gavelkind.

Moreover, as is shewn in the books and by modern decisions, the rents-service arising out of gavelkind land, so long as they are unsevered from the manor, descend with it in the same way as the demesnes.

Besides this, the advowsons, whether still appendent to the manor and demesnes, or held in gross and at large, are descendible in the same manner as other tenements which were not orginally socage. Where the manor and demesnes were not gavelkind, the advowson originally appendant to them cannot now be partible in descent.

The lord's waste in each manner is of the same tenure as his demesnes. Therefore the portion kept in almost all the manors of Kent for the roads and the commons has never been gavelkind, whether now approved or enclosed, or still treated as waste. None of the houses and gardens on the waste of the manors given at first in knight-service or free alms are gavelkind.

But there are manors, or reputed manors, created before the statute *Quia Emptores*, which were carved out in early times from the "ancient socage" portions of superior manors held by a higher tenure. Such are gavelkind now, with their demesnes, advowsons, and other appurtenances.

It will also be found that some manors are described in "Domesday Book" as having at that time no demesne.

In these cases we should argue that the manors themselves are now common socage, but that all the land, though taken into demesne at a later time, is gavelkind; and by sundry verdicts we find that this has always been known. In one instance, extracted at length below, a jury found that the manor was held by ancient knight-service, but that the demesnes, and all the rest, were partible among the heirs male, and this was one of those described in "Domesday Book" as having at the Conquest *nihil in dominio*.

CHAPTER II.

Tenures in Kent before the Conquest.

The ancient laws of real property; Crownland, Folkland, Bookland.—Kentish manors held in Francalmoigne.—Form of the charters of donation.—The *Trinoda Necessitas*.—Queen Edith's gift to Christchurch.—Franchises.—Sac and Soc.—Military services.—Three classes of Thanes.—Allodial tenants.—Drengs or Threngs; tenure of their lands.

We have seen that immediately before the Norman Conquest Kent was divided between the king, the Church and the great thanes. Their estates were further subdivided into the demesnes which remained free, and the tributary portions granted to tenants in socage. When the tenures were feudalized, the relative proportions of the free and tributary lands were not altered, and they have not since then been affected by any of the changes in the law of real property.

But the division of the soil between the king, the noble classes, and their tenants, was comparatively of late growth. In earlier times a different principle prevailed; the land had then been broadly divided into crownland, folkland, and bookland[a].

Folkland was the property of the people, and could not be held in perpetuity. It might, indeed, be occupied in common by the freemen of the district, or even be possessed in severalty; and in the latter case it was probably parcelled out to individuals in the folk-gemote, or court of the district, the grant being attested by the freemen

[a] "Prædia Saxones duplici titulo possidebant: vel scripti auctoritate, quod *Bookland* vocabant, vel populi testimonio, quod *Folkland* dixere."—(*Spelm., Gloss.*, '*Bocland.*')

present. But while it was folkland it could not be aliened in perpetuity, and therefore, on the expiration of the term for which it was granted, it reverted to the community, and was again distributed by the same authority[b].

It was liable to the universal imposts of the land-tax, and the *trinoda necessitas*, or contribution to build bridges, roads, and castles, and towards repelling invasion, and to the special payments of aids to the sheriff, fees to the alderman, and *purveyance* in every shape, the tenant having to provide food and lodging for the king and his nobles when journeying, and to maintain their servants, hounds, hawks, &c.*

* Heming, Chart., 31, 58.

In course of time the freemen ceased to grant the folkland, which was now supposed to be held in trust for the freemen of the shire, by the king and his council †. This was only an intermediate step to the theory which obtained when the Normans invaded England, viz. that the folkland, called *terra fiscalis* when held by the king in trust, had become the absolute property of the Crown by as good a title as the lands originally set aside as crownland. It was therefore taken by William I. as the successor of Edward, and such portions as he did not immediately grant away are now the ancient demesne of the Crown.

† Kemble, Codex Diplom. ii. 9.

Bookland was of an entirely different nature. In its strictest sense it is applied to lands given by "book" or deed, but in common use it meant all lands aliened in fee, whether by a formal deed, or by the symbolical delivery of a rod, a turf, or a horn ‡. It might be alienable or not,

‡ Steph. Blacks. i. 501.

[b] Allen, "Rise of the Prerogative," 142. In this explanation Hallam, Palgrave, Thorpe, Spence, and Kemble concur, "so that we may now consider this interpretation as in possession of the field." See "Middle Ages," ii. 294, &c. For older explanations now held to be incorrect, see Somner, Gav. 87, 112, 114, 126, Co. litt. 6 a; Dalrymple on Feuds.

according to the terms of the original donation, the general rule being that the intention of the donor must be observed [c].

The king or queen might have alienable booklands, but the bulk of their estates had been allotted to them by the nation, and therefore could not be disposed of without the consent of the Council. Without this the grant was void.

Baldred, the last King of Kent, gave the manor of Malling to the Church of Canterbury in free alms, but omitted to gain the consent of his nobles. This was remedied by Egbert, who confirmed the deed in these words, A.D. 838:—

"Egbert, and Ethelwolf his son, give to the Church of Christ at Canterbury, Mallings, which manor Baldred gave before to the same church, but inasmuch as it was without the consent of the great men of his kingdom, that grant could not stand*."

* Spelm. Engl. Works, 234; Somn. Gav. 112.

And in the same way the gift of Queen Edith or Ediva to the monks of Christchurch, by which many of the lands of the cathedral are now held, contains "the licence and consent of the king, attested by the bishops and nobles †."

† Kemble, Cod. Dipl. vi. 44.

Bookland might be held by laymen, though at first charters were only granted to the Church. Then laymen obtained land on equally free terms on condition of building churches, and at last (between the reign of Edwy and the Conquest) it became usual to dispense with any such conditions ‡.

‡ Spelm. Engl. Works, ii. 19; Kemble, Anglo-Sax. in England.

In the hands of a layman it was alienable *inter vivos* and by devise [d], though the devise was supposed to be allowed

[c] Laws of Alfred, 37, tit. Boc-launde; Spelm., Glossary; Somner, Gav., 87; Kemble, *Codex Diplomaticus*, i. 30.

[d] As to the early law of devise in Kent, see the will of one Birhtric of Mepham, extracted at length in Lambarde's "Perambulation," 492. It was produced by the court as a precedent for devise of lands in Kent, in

by special favour of the lord, to whom therefore a heriot was bequeathed "that the will might stand."

The heriot of a freeman was usually a gift of arms, as the name itself signifies. It was at first voluntary, but afterwards became necessary. It differed in nature both from the Norman "relief," which took its place, being a payment by the incoming heir, instead of by the deceased owner's will, and from the heriot-service and heriot-custom now existing on certain inferior freeholds and copyholds [e].

Although bookland was generally held in fee, it was forfeitable to the king for misconduct in battle, a case in which an allodial tenant in France or Germany would have only incurred the fine for cowardice or *heribann* [*].

[*] Somn. Gav. 113; Ling. Hist. i. 341. Laws of Canute, c. 145.

Bookland was sometimes granted merely for a life or lives, or in a species of entail male, in which case the remainder was almost always limited to the Church in free alms for ever. See an old will dated A. D. 1046, extracted by Somner from the Canterbury archives, where land in Stistead is left to two persons for their lives, and afterwards to the Church in francalmoigne; and a deed by which Canute granted Folkstone to a priest for life, with remainder to Christchurch [f].

But most of the booklands in England were held by the

Launder v. *Brookes*, Cro. Car. 561. See also a devise of lands to the monks of Christchurch, (at Apledore, Orpinton, &c.,) Somn., Gav., App. xxiii.

[e] Heriots were first mentioned in the reign of Edgar, and first regulated in that of Canute. 2 Bl. Comm. 423; Selden, ii. 1620; Middle Ages, ii. 416; Laws of Canute, c. 69; Coke, Copyh. 23; Bract. ii. 36. "Heriottum magis fit de gratia quam de jure." Steph. Bl. i. 628.

[f] Dart, Hist. Canterbury Cathedral, App. i.; Cotton MSS., Vitellius, D. 7; Somn., Gav. 12, 13, App. xxii.; Domesday, 59 b, 72; Heming, Chart. 248.

bishops and their monks in common in francalmoigne, and this was especially the case in Kent, where the Church held a large proportion of the land as late as the dissolution of the monasteries.

The deeds by which this tenure was created were in general exceedingly simple, the old books describing it merely thus: "Francalmoigne, or free alms, is when lands or tenements were bestowed upon God, i.e. given to such people as were consecrated to His service*." It was not until much later times (probably the beginning of the reign of Henry II.), that any legal formula, such as "free, pure, and perpetual alms," was demanded from the donor in francalmoigne. The gift before the Conquest was usually made *Deo et Ecclesiæ*, with the addition in some cases of such clauses as "for the good of my soul," "for my own and my ancestors' souls," and the like.

* Co. litt. 94 b.

Many of the deeds were more complicated, and comprised six parts, viz. an invocation, a "movent clause," or preface, the grant itself of lands, commons, and easements, (and in the time of Edward the Confessor, a long list of territorial franchises,) the sanction, date, and *testatum* †[ε].

† Kemble, Cod. Dipl. i. 9.

ε An example of the simpler kind of deed is found in Thorn (*Decem Scriptores*, 2225): "Ego Wulfstanus cognomine *Wild Priest*, annuente domino meo Ardiknuto, concedo ecclesiæ Christi in Dorobernia terram patrimonii mei nomine *Turroch*." Another of a more formal kind is given by Heming. It was a deed of Athelstane dated A.D. 930, in which it was said, "Let this land remain free for ever so long as the Christian religion remains among the English in Britain; let it be free from all burdens of human service, and from all secular payments and dues; let it have all advantages, commodities, &c., of right pertaining to the said Church, in the land, and all woods, fields, meadows, pastures, streams, &c., three things only excepted, viz. freedom from repairing bridges, roads, and castles, and from repelling an invader."—(*Heming, Liber de redditibus Eccles. Wigorn., Cott. MSS., Tiber*, A. 13.)

A large estate, comprising Mepham, Cowling, (East) Lenham, Aldington, Monkton, (East) Peckham, and (East) Farleigh, was given to the monks of Christchurch, by Queen Eadgifû, or Edith, the daughter-in-law of Alfred and stepmother of Athelstan. The deed itself was lost by fire in the twelfth century, but a copy of it is in the register at Canterbury, and was also copied from the Lambeth MSS. into the *Codex Diplomaticus*. It is confirmed by her son King Ethelbert and his witanagemote [h].

No set form, as has been said, was used in these deeds, "but only honest and perspicuous words to express the

[h] After giving a long account of her troubles respecting the possession of these lands, the Queen proceeds thus: "Anno incarnationis 961, Ego Eadgyva regina et mater Edmundi et Eadredi regum pro salute animæ meæ concedo Ecclesiæ Christi in Doroberniâ monachis ibidem Deo servientibus has terras *Meapeham Culinges Lenham Pecham Fernleigh Munceton Ealdinton* liberas ab omni seculari gravitate exceptis tribus pontium et arcium constructione expeditione. Ego autem licentiâ et consensu illius (*Edgar*) testimonioque omnium episcoporum et optimatum suorum omnes terras meas et libros terrarum (land-books or title-deeds) propriâ manu meâ posui super altare Christi *quæ posita est* in Doroberniâ. Si quis," &c. Confirmed by Ethelred, &c. (*Cod. Dipl.* vi. 44.) "On the staircase leading to the library is a very ancient picture representing Queen Edyve in her robes, with crown and sceptre. At the bottom are the following lines in old characters:—

"Edith the good queen and noble mother
To Ethelstane Edmund and Edred
Kings of England, every each after other,
To Christ's Church of Canterbury did gibe indeed
Monkton and Thorndenn, the monks there to feed,
Mepham, Cleve, Cowlinge, Osterland,
Eastfarleigh and Lenham, as we believe
In the year MXXI.
Of Christ's incarnation."—(*Duncombe, Descr. Cant. Cathedral.*)

In this inscription not only the date is wrong, but the gift of Cleve (i.e. West Cliff, Molland and Bury Court), Osterland and Thorndenn is wrongly attributed to Queen Edith. They were given a century earlier, by Offa, to Christchurch, in free alms.

thing intended with all brevity*." It would therefore be surprising to find that two or three which have come down to us are grants "in puram liberam et perpetuam eleemosynam," a phrase which is an anachronism, if we did not remember that these are Latin versions of English originals, or rather in all except one case forgeries †[1].

* Spelman, Engl. Works, 234.

† Kemble, Cod. Dipl. i. 6.

The booklands of the Church were exempt from all services, except the *Trinoda Necessitas* ‡, (or, as it was variously called, *labor communis*, *onus commune*, *generale incommodum*, *&c.*,) which was not a service connected with tenure, but the duty of every citizen.

‡ Kemble, Cod. Dipl. i. 11.

Whether it was a county-rate, or in whatever way it was enforced, it is certain that every Englishman in person, or by deputy, was bound to raise and keep up roads, bridges, and castles, and repel the invaders of the country. In this respect the lands of the Church did not differ from those of the lay nobles and gentry §[k].

§ Steph. Blackst. i. 228; Selden, Janus, i. 42; Bracton, iv. i. 28.

[1] Spelman gives one of them at length, beginning "Ego Edgar totius Britanniæ Basileus," &c., (*Concilia*, i. 443). The others are taken from the Chronicle of the false Ingulf, now admitted to be a forgery of a later date, though apparently Savile and Spelman admitted its genuineness without any doubts. It has been lately described as "a monkish forgery, with its charters composed in the scriptorium, its general history a patchwork of piracies, and its special anecdotes all fictitious." Sir Francis Palgrave and Hallam ("Middle Ages," ii. 306) brought forward a great many proofs of the forgery, which is probably of the fourteenth century. But the Kentish writer, Somner, has not received enough acknowledgment. In his treatise on Gavelkind, pp. 81, 101, 102, he collected many instances, which threw doubts on the genuineness of Ingulf. See also Mr. Hardy's "Descriptive Catalogue of Materials for English History," vol. ii.

[k] Spelman curiously enough takes exception to any tenure being perfectly free when the *Trinoda Necessitas* was due from the land, forgetting that it was from all alike. "The deed maketh the land to be given in francalmoigne, and yet sheweth that they were tied to expedition against the foe, building of bridges, &c., yea, and calleth it notwithstanding *puram eleemosynam*, whereas though *in liberâ eleemosynâ*

"A grant of land to the Church, saving only the three general duties, was *ipso facto* a grant in francalmoigne*; and the absence of such a saving clause has been considered by good authorities to be a mark of forgery in every case[1]."

* Seld. Tit. of Honour, 697; Kniveт, 44 Edw. III. 25; Fitz. Assize, 445.

Lands of this tenure in Kent were exceedingly common, and they are very often denoted in "Domesday Book" by the letters L. S. A. (*Libera Sicut Adisham*), referring to a grant of Adesham Manor to Christchurch[m].

a rent in old deeds hath been sometimes reserved, yet can it not be called *pure* if any rent or service at all be reserved to the donor." (Engl. Works, b. 20.) He adopts a distinction made by Bracton, but not adopted by later authorities, between free and pure alms. Co. litt., 97 a. We may notice: (1.) That the deed of which he spoke was at most a Latin translation, and in all probability a forgery; (2.) That rent reserved on a grant *in liberâ eleemosynâ* is void, (Burn's Eccl. Law, 232; Fitzh. Mesne, Mic. 4 Edw. IV. 35; Hil. 13 Hen. IV., and cases cited in Co. litt., 97 a.); (3.) That the *Trinoda Necessitas* was not a service of a tenure, nor reserved by the donor, but the common duty of citizens of every tenure to the State.

[1] Lingard, Hist. of Anglo-Saxon Church, i. 244; Kemble, *Codex Diplom.*, i. 10. There are some exceptions to the rule, the *Trinoda Necessitas* having been occasionally remitted in the North of England, but the abuse was soon checked. (Spelman, *Concilia*, i. 256; Bede, Eccl. Hist., iii. 24, and *Epist. ad Egbertum*, 309; Kemble, *Codex Diplom.*, i. 161; Lingard, Engl. Hist., i. 243; Leland's *Collectanea*, iii. 54.)

This last writer asserted that in every part, *except Kent*, the three great duties were occasionally remitted to the Church, but this was too hasty an inference from a temporary practice of the Northumbrian and Mercian kings. (Wilkins, *Concilia*, i. 100; Lingard, Hist. Engl., i. 344.)

[m] King Ethelbald gave it in these words: "Manerium de *Adesham* ad cibum monachorum cum campis pascuis silvis, &c. liberum ab omnibus secularibus servitiis et fiscali tributo, exceptis istis tribus consuetudinibus, expeditione, pontis arcisve constructione, id est, communi labore de quo nullus excipiebatur." (Hasted, iii. 670; Sandys, *Consuet. Kanciæ*, 102; Battely's Somner's Antiquities of Canterbury, 26; Selden, Titles of Honour, 697.)

The monks ventured upon an occasional forgery, e.g. a grant of Sandwich and Eastry, by Egbert, to the monks of Christchurch, free from

While we are upon the subject we may notice that this triple duty continued, and in some respect still continues, to be imposed on lands in francalmoigne.

The prior of St. Oswald's proved that his land was given free from all earthly service, yet it was held that he was bound to repair roads and bridges[n]*. * Seld. Titles of Hon., 678; Fitz. Assize, 445.

In the same way the monks of Christchurch were bound to contribute to the repair of Rochester Bridge †, and when their monastery was dissolved, and their lands to a great extent given to the new cathedral of Canterbury, the king's letters patent contained these words, "that, lastly, the gifts of alms to the poor, the repairing of roads and bridges, and other pious offices of every kind may increase and spread far and wide, we give and grant, &c. to have and to hold of us and our successors for ever in francalmoigne (*in liberam puram et perpetuam eleemosynam*[o])." † Lambard. Peramb., 382—390.

In many instances, during the reign of Edward the Confessor, and almost universally during the reigns of the early Norman kings ‡, the charters contain a full form of words, conferring upon the donees in francalmoigne the franchises of territorial jurisdiction, and of measuring and imposing the fines appropriate to different crimes. The standard for these fines appears to have been fixed once ‡ Kemble, Cod. Dipl. i., Pref. xliii.; Ellis, Introd. to Domesday, i. 275—286.

the *Trinoda Necessitas*, now in the library of St. John's College, Cambridge, and quoted in the *Monasticon*, vol. i., Canterbury Cathedral. And another, on which the abbey of St. Augustine's set great store, professes to have been executed by Canute in favour of those monks; but it is full of anachronisms, and does not even allude to the *Trinoda Necessitas*. Kemble, *Cod. Dip.*, i. 43; Hickes' *Dissert.*, 66; *Archæologia*, xviii. 49.

[n] Knivet, 44 Edw. III., 25 a.

[o] *Monasticon*, vol. i., Cant. Cathedral, App.; Harleian MSS., 1197. See also the case of the *Maison-dieu* at Dundee, and Lord Cranworth's Argument, Scotch Peerage Cases; Macqueen, House of Lords, iv. 2; Decisions in Court of Session, Second Series, xx. 849.

for all by Canute*, who consolidated the codes of law, which before had differed in various parts of England. Before the time of Edward it was not usual to express in words the franchises, which perhaps were well known to be inherent in the land; but it was found expedient in the keener air of the Norman jurisprudence, which gained ground in England for some time before the Conquest, to express exactly what was intended to be given†. Accordingly from this time we find in full use the well-known form of words, *sac* and *socn*, *toll*, *team*, and *infangtheof*, which the Normans were always careful to employ even while expressing their ignorance of the exact meaning to be given to the words‡. These franchises, being fragments of the royal prerogative, could not be given without the authority of the king, and in some cases of the witanagemote; and the transfer of jurisdiction over a manor from a private person to the Church, could therefore only be effected by virtue of the royal assent and ratification.

* Ling. Eng. Hist. i. 282; Somner, Gav., 80.

† Kemb. Cod. Dip. i. 44.

‡ Rot. Cartarum, Intr. 37, 37 Hen. III., m. 5.

"The policy of the constitution was to bring justice home to every man's door§," by constituting as many courts of law as there were manors in the kingdom; and the courts which had by far the most extensive powers were those of the king's donees in free alms. Only the highest nobles had privileges as wide as those of the Church, which in the succeeding reigns retained the powers, after in many cases losing the francalmoigne tenure, to respect for which their privileges were in the first instance due.

§ Stephen's Blackst., iii. 372.

Jurisdiction was usually given by the words *soc*, *sac*, *&c.*, quoted above, the meanings of which have been a fruitful source of dispute among antiquarians‖; the numerous other names of privileges, not so generally recited, re-

‖ Hall, M. A., ii. 299; Ellis, Introd. 275; Somner, Antiq. Canterb. ii. 103.

ferred chiefly to the power of imposing fines on offenders against the law within the limits of a particular manor, or cluster of manors.

A brief explanation of the meaning of some of these names is rendered necessary by the fact that they occur in almost every important deed affecting our subject for centuries after the Conquest, and such was the virtue which they were imagined to possess, that they were usually inserted in English by conveyancers, including those who did not know a word of the language. Land was expressed to be given together "with sac and socn, on strande and stream, by wood and on field, toll by land and water, team, infangtheof, and outfangtheof." More are sometimes added, but this is the most usual form.

The monastery of Christchurch and the abbey of St. Augustine enjoyed these privileges down to comparatively modern times, as may be seen by the pleadings on writs *De Quo Warranto* in Kent.

Soc was the right of holding a court, and deciding all except certain royal cases, holding pleas of contracts, covenants, and trespasses of the tenants. The liberty of Christchurch was granted to the Dean and Chapter of Canterbury, 33 Hen. VIII., but like that of St. Augustine's, its court has been long disused [p] *. * Hast. i. 258.

Sac is a less general word, and means the right of imposing fines for offences committed within the lordship [q].

[p] *Soc* was the right "aver fraunche court de ses hommes." (MS. quoted Somner, Gav., 136, from the Cant. Archives; Thorn. Chron. of St. Augustine's, 2030; *Codex Diplom.*, i. 44; Fleta, i. 47; Co. litt., 5 a; Book of Evidences of St. Augustine; Arundel MSS., 310.

[q] *Sac* has been rendered by *lis*, *soc* by *investigatio*. *Cod. Dipl.*, i. 44. But the chronicler of St. Augustine's, and the MS. Book of Evidences, render it "the right of imposing forfeits." "The thane with *sac* and *soc*" corresponds to the later expression, "lord of a manor with court-

Toll was the right of exacting or refusing toll on journeys by land and water. The "customs called *team* and *theme*" were of different meanings, the first being the right of taking warranties within the lordship, the second and more usual being the jurisdiction over the bodies, goods, and chattels of all serfs born upon the estate[r]*.

* Book of Evid. of St. Aug. Thorn. 2030.

Infangtheof was the right of trying a thief caught within the bounds of the lordship, as *outfangtheof*, its correlative, was the same right over one caught outside those bounds.

These are the principal privileges exercised by the barons, lords of manors, prelates, and monks in Kent, which came down from the early times before the Conquest; but there was a host of minor rights not so often named in deeds, which it is not necessary now to describe minutely.

The list comprises many rights retained by lords of manors at the present day, as well as many which are obsolete, viz. the right of imposing and retaining fines for various offences, as breach of contract, of recognisances, or of the peace, for murder, homicide, burglary, robbery, unlawful distress (*withernam*), adultery, and sheltering criminals; the exemption from land-tax, from the jurisdiction of the king's courts (except in royal cases), or from the court of the lathe (in Kent); the power to remit money due for watch and ward; to impose fine for the

baron and court-leet." (Co. litt., 58 a; Bracton, iv. 112; Ellis, Introd. to Domesday, i. 175.)

[r] "*Theme* (sometimes written 'theame' corruptly) is an old Saxon word signifying '*potestatem* in nativis sive villanis cum eorum sequelis bonis et catallis.' But *teame* (sometimes also corruptly written '*theame*') is of another signification; for it is also an old Saxon word, and signifieth 'where a man cannot produce his warrant of that which he bought according to his voucher.'" (Co. litt., 116 a.)

birth of an illegitimate child of a neif or female serf, to keep all treasure-trove, to impose oaths and ordeals, to hold fairs and markets, and the like[s].

One of the greatest privileges of the Kentish tenants in francalmoigne was the jurisdiction over the lesser thanes (also called threnges and drengs) on their estates. These men, called in Kent *Thegenes* and *Allodiarii*, were turned into knights when the feudal system was established, except, as we shall see, on the manors of the priory of Christ Church[t].

Turning now from the book-lands of the Church to those of the laymen, we find that the thanes were divided into three chief classes, the greater, the medial, and the lesser thanes, of whom we have just written.

It was at one time a favourite theory, that all the lands of each of these classes of owners was held by "the honourable tenure of military service*." This was supported among other proofs by the fact that the Norman writers always rendered 'thanes' by 'barons' or 'knights' (*milites*). It is clear, if our copies of the Saxon laws are correct, that some lands were held by military service; but most

* Ling. Hist. Engl. i. 352.

[s] Ellis, Introd., i. 275—286; Kemble, *Cod. Dip.*, i. Pref. xliv.; Somner, Gav., 133; Antiq. of Cant., ii. 103; Thorn's Chronicle, 2231; Fleta, i. 47; Steph. Blackst., iii. 148; Lambarde's Perambulation, 224; Ayloffe's Kalendar of Ancient Charters, 26, and E. E. 17; *Pleas de Quo Warranto*, 6 Edw. I., 325; Madox, Excheq., i. 117; Treatise on Danegeld, 1756; Bracton, ii. cap. vi.

[t] Jurisdiction over these men is expressed to be given in most of the early charters of St. Augustine's Abbey and Christchurch in one of the following forms of words: "et super omnes allodiarios quos eis habeo datos," or "etiam super tot *thegns* quot eis concessit pater meus;" or in English, "over swa fela thegenar swa ic heom to geletten hebbe," 'over so many thanes as I have allowed them,' and the like. (Somner, Gav., App. xx. xxi. *Monasticon;* Cant. Cathedral, and St. Aug. Abbey, Appendices.)

of the tenures were entirely allodial, and unaffected by the imperfect feudalism which preceded the organized system of the Conqueror, and it is also probable that "too much stress has been laid upon the military service required from all freeholders," as subjects of the king, not as vassals of a lord[u] *.

* Ellis, Introd. to Domesday, i. 58; Hallam, M.A., i. 147.

Without discussing further the unripe feudalism of the Saxons, in which almost all the elements of the perfect system existed in embryo, we will distinguish between the three classes of thanes or free holders of book-land.

1. In the first were the members of the great Council, or Witanagemote, the earls or aldermen who with the bishops and abbots and the officers of the royal household, formed a nobility of office. These correspond to the barons of later times, the king's 'companions,' or *gesith*, called also *Comites* simply, representing what was afterwards the class of tenants by grand serjeanty †.

† Co. litt. 5 b, 6 a; Ellis, Introd. i. 45.

2. In the second were the medial thanes (called also *Theoden*, or *thaini mediocres*), representing according to some the Norman vavasours ‡, or more properly the lords of manors §.

‡ Rapin, i. 150.

§ Co. litt. 5; Kelham, Domesday, Illustr. 200.

3. In the third, comprehending the smaller gentry, were the lesser thanes, holding like the preceding classes by a free allodial tenure[x]. They owed no rent or service for

[u] On the subject of military tenures before the Conquest, see the great Case of Tenures, and the arguments of the Irish judges, printed 1720; Selden, Titles of Honour, 513, 520; Spelman, *Concilia*, i. 195; Co. litt. 64 a (1), 76 b, 83 a; 3 Co. 25, and Preface; 6 Co. 75; 8 Co. 163, 171; Hale, Common Law, c. v. note H; Spelman, Glossary, 'Feudum;' Hallam, M. A., ii. 296; *Leges Inæ*, x. 23; Somner, Gav., 210.

[x] They were also called variously *drenchs*, *drengs*, *threngs*, and in the Danish counties, *young-men*. Some at least among them forfeited their land for misconduct in war, and some were under the jurisdiction of a superior lord, though most (as in much later times) held immediately

their lands, and in the language of Domesday Book, in the survey of Hawley in Kent, "could not have any lord but the king," except where jurisdiction over them had been granted in the charters of particular churches or nobles. Among them we may probably include the lower set of *comites*, who were the 'companions' of the greater nobles[y], as well as those ceorls or yeomen who acquired the *status* of a gentleman by the possession of five hydes of land of their own, &c., and those burgesses, who acquired the same degree of nobility by three trading voyages beyond the sea. Among them, too, were probably those *socmanni* of Kent who had acquired manors of their own, in some cases of a considerable size. These chiefly appeared in records of the tenants of Romney Marsh, for which it was necessary that resident owners should be found, and which yet was by no means a favourite district with the gentry of those times. We learn from the Domesday survey of Kent, that the king had in general the jurisdiction over, and the fines received from these thanes of the third degree, and also over their tenants, and also a heriot (afterwards a relief) on the death of one of them, except in the lands of St. Augustine, of Christchurch, and the canonry of St. Martin at Dover, having in these cases alienated his "power over the thanes on their land[z]."

of the king, but their tenure, though in some respects restricted, was certainly allodial. (*Leges Inæ*, x. 23; Hallam, M.A., ii. 269, 364.)

[y] Burhtric of Mepham, whose will is extracted in Lamb. Peramb., 495 (referred to in *Launder* v. *Brookes*, Cro. Car., 561), seems to have been one of these "thanes of a thane."

[z] "Has forisfacturas habet rex super omnes allodiarios totius comitatûs *Kent* et super homines eorum."

"In Cantiâ quando moritur allodiarius Rex inde habet relevationem terræ exceptâ terrâ S. Trinitatis et S. Augustini et S. Martini, &c."

The well-known fragment of the law, ascribed to Athelstane, but probably of an earlier date, which shews how a yeoman might become a lesser

All the free lands of Kent were divided between the Church, the king, and the great thanes or "peers of Kent." Under these last, different manors were held by the medial thanes, and holding lands in certain manors were the lowest class of allodial tenants; in some cases, however, a whole manor belonged to a threng, or lesser thane.

Under them all were the soc-men or rustics of various degrees, holding all the land not required for the lord's own use by a free socage tenure. The gavel-men cultivated their own estates, and paid rent and services as a tribute; the borderers cultivated the lord's demesne as the service by which they held their strips of outlying land.

What was free land then in Kent is at the present day descendible to the eldest son, and is held in free and common socage.

What was tributary then, is now all held by the ancient socage tenure of gavelkind.

thane, runs in modern English thus:—"It was whilome in the English law that the people and the law were held in repute, and then were the wisest of the people worshipful each after his degree, earl and churl, thane and under thane. And if a churl thrived so that he had full five hydes of his own land, a church, a bell-house, a gate, a seat, and an office in the king's hall, thenceforth was he worthy of a thane's right. And if a thane so thrived that he served the king, and rode on his messages with his household, and if he then had a thane that followed him who had five hydes of land for the king's expeditions (i.e. enough land to support a soldier for the army), and served his lord in the king's palace, and thrice had gone with his message to the king, such a one might afterwards, giving his oath first, play his lord's part at any great need.

"And if a thane so thrived that he became an earl, then he was afterwards worthy of an earl's rights. And if a merchant so thrived that he passed thrice over the wide sea of his own craft (with his own wares), thenceforth he was worthy of a thane's rights, &c." (Laws, 71; Lamb. Peramb., 500.)

CHAPTER III.

Gavelkind.

Tenure of the yeomen and rustics.—Gavel-land.—Rents and services due to the lord.—Many varieties of Socage.—Customs of the Kentish Socmen.—Incidents of their Tenure.—Personal freedom.—Alienation *inter vivos*.—Devise.—Bequest.—Descent.—Dower.—Curtesy.—Escheat.

HAVING now noticed the condition of the various allodial freeholders, we can the more easily discuss the tenure of that large body of freemen who held their lands in socage. All who were not slaves, serfs, or thanes, were included in one or other of the subdivisions of this body of yeomen and rustics. In the same way all lands that were not allodium were held in socage.

Thane-land, as we have seen, was free from rents, and from all services, except such as were in the nature of taxes on all subjects. The possessions of the Church were liable to the *Trinoda Necessitas*, and some free lands were charged in addition with purveyance and various dues; but the essential characteristic of socage was its liability to rents and services due, not to the State, but to the grantor, who in most cases was the lord of the manor, holding under a charter given or confirmed by the Crown.

Gavel, or *gafol*, was the old name for rent, including in that term money, labour, and provisions*; "so that *terra ad gablum posita* (the most usual expression) is 'land let out for rent.' In the latitude of the word it means besides all 'censual' or tributary land, as also what we call customary land, and so takes in all held by rent-service, which with our Saxon ancestors was called and known

* Co. litt. 142 a.

by the name of gafol-land or the like. And *gavelkind* is the land's right name, whose signification of *censual* or *rented land* (by rent-service) was never questioned till within our fathers' memories[a] *."

* Somner, Gav. xv. 41.

† Rob. 3; Philipot 2; Lambarde, Per., 585; Hasted, i., Introd.

In this interpretation all modern Kentish writers agree †, the name having only become peculiar to this county when socage in the rest of England had been modified to suit the new system. The confusion which has arisen from using the word in other senses will be noticed afterwards at a greater length.

It happened sometimes, no doubt, that gavel-lands were held by thanes, spiritual or temporal, and in such cases a rent was due, for mere ownership by a thane could not change the nature of socage ‡; in a like manner (as will be seen later in a chapter on burgage), allodial land occasionally came into the hands of simple burgesses, but it did not thereby lose its allodial nature. These irregularities in tenure were not, however, frequent, the great bulk of allodium being held by the thanes, as almost all the socage-lands were held by the lower orders.

‡ Kemble, Anglo-Sax. in England, i. 350.

There are many subdivisions and distinctions to be noticed in the ancient tenure of socage, some of which at this distance of time it is hard to define with exactness. Three chief varieties exist in our own time, viz. (1.) Gavelkind in Kent, which is the old Saxon socage slightly modi-

[a] Gavelkind land is often mentioned in Domesday Book, viz. "terra in consuetudine, ad gablum posita, tenere ad gablum." In other places "gablum rusticorum, gablum et consuetudo," and "gablatores" are mentioned (Kelham, Domesd. Illustr., 218). It is well described in Wilkins' Gloss., 404. After an account of free or thaneland, gavelkind is defined to be "censualem, tributariam, reditui annuo ceterisque prædiorum rusticorum obnoxiam ac Saxonum gafol-land respondentem de quâ in fœdere Aluredi et Guthruni 'butan thæm ceorle the on gafol-land sit,' i.e. præter rusticum qui in terrâ censâ manet." (Treaty of Alfred, c. 2; Lambarde, *Archaion*, xlv., c. 2.)

fied by the later law, (2.) Free and common socage, which is the same tenure much modified by the feudal law, and (3.) Burgage, or borough-socage. The rest have generally disappeared.

It must not be supposed that the name of the *villani* or yeomen implied servitude; they were carefully distinguished from the predial serfs for several reigns throughout England, and in Kent their freedom was never impaired [b].

It is impossible to understand clearly the law of real property in Kent, or to decide upon the true reason of the cases which from time to time arise upon the construction of the Kentish customs, without attending particularly to the old law respecting this large body of socage-tenants, which has descended nearly unaltered to our time.

There was at one time great difference of opinion as to the meaning of the word reeve-land, which in Domesday Book was apparently opposed to thane-land; e. g. in the notice of a manor in Herefordshire it was said, "this was thaneland in the reign of King Edward, but was afterwards turned into reeveland."

This passage led the judges in the case of tenures in Ireland to maintain with Coke * that reeveland meant

* Co. litt. 86 a.

[b] "Villiens sont cultivers de fiefs demorants en villages uplandes, car de vill est dit villein," (and, "base tenants qui fesoit villein service mes ne fuit pas villein"). (Somn., Gav., 74; Co. litt. 116 b.) The same distinction is made in the well-known passage of Bracton, i. cap. 7: "Fuerunt in Conquestu liberi homines qui liberè tenuerunt per libera servitia vel per liberas consuetudines: et quum per potentiores ejecti essent, postmodum reversi receperunt eadem tenementa sua tenenda in villenagio, faciendo inde opera servilia sed certa et nominata, &c., et nihilominus liberi quia, licet faciunt opera servilia, cum non faciunt ea ratione personarum, sed ratione tenementorum," &c. In Kent, however, they did not receive their tenements back "tenenda in villenagio," but in socage, as free as before.

nothing but socage; other great writers doubted whether it could mean folkland. It is now, however, known that there was no exhaustive division of tenements into thaneland and reeveland, the latter meaning only the estate attached to the sheriff's office; this did not contribute to the land-tax, or in any other way towards the military defence of the kingdom, and therefore any unjust inclusion of ordinary thaneland into this "sheriff's land" would be noticed and set aside [c].

The distinction which has been drawn between the thane-land of the upper classes and the gavelkind of the yeomen is continually maintained in all the treatises on the old law of real property. The two tenures differed essentially, both in name and in nature; the first was free from all but the common dues of a citizen to the state, the other was encumbered with a multitude of customs, rents-services, and usages which still form the basis of the law of socage tenements.

Besides the general name of gavel-land, other names were applied to land held by different varieties of socage.

Such are the old terms *stockikind, neat-land, out-land, work-land, aver-land*, &c., a short explanation of which in detail may serve further to explain the true nature of gavelkind.

1. *Stockikind* is a Kentish term of very rare occurrence, which it is difficult to distinguish from gavelkind; it is used in an old deed [d], by which the reputed manor of Brockley, near Greenwich, was granted by Michael Turn-

[c] *Rotuli Cartarum*, Introd.; Wright. Tenures, 47; Dalrymple, Feudal Property, 9; Hallam, M.A., ii. 294; Spelman, Posth. 38.

[d] The deed by which Juliana de Maminot granted the land to be held thenceforth in free alms, contained these words, "dedi totam terram illam quam vendidit mihi M. T. sicut suum liberum gavilikind et stockikind ad fundandam ibi domum religionis." (Dugd., *Monast.*, ii. 640; Hast., i. 356.)

ham, with the consent of his heir, to Juliana de Maminot, that she might found a religious house on the land.

Neat or *ge-neat*, an old word meaning a labourer, gave another name to socage. *Neat-land* includes all that was held by the service of doing the lord's farm-work, carrying his messages, and the like. It corresponds to the later terms *fief de roturier*, or "ploughman's fee," used in Kent as synonyms of gavelkind[e].

Outland and inland, terms still used in certain parts of the county*, require rather more explanation. They have often been construed to mean merely the tenants' lands and those retained in demesne, but this is not correct. The former term includes all that was held by the yeomen, or gavelkind tenants proper, the latter all that was given (in smaller quantities) to the borderers, who aided the serfs and cottagers to cultivate the lord's demesne. Both kinds are now gavelkind in its fullest sense, but at one time, as will appear later from the records of the Priory of Christchurch, the tenants of inland had not the custom of partible descents. The regular gavel-men are distinguished from them not only in the records of Penshurst and Chevening manors, but in those of Mepham †, and in the "Rochester Custumal," &c.[f]

* Hasted, iii. 107, 230.

† Somn., App. xii.

From the inland, as well as the outland, rents and services were due, which are now represented by small quit-rents. But from the demesne lands there could not

[e] *Leges Inæ*, c. 19; Kemble, "Anglo-Saxons in England," vol. i. 323; Somner, Gav. 114; Lamb., Peramb., 545. *Rectitudines singularum personarum.*

[f] A good example of the difference between inland and demesne is found in the Harleian MSS., 1708. f. 15: "*De in-landâ in* Chels in dominium convertendâ:" cf. ff. 155 b, 159, 219 b. Inland was sometimes taken into cultivation with the demesnes, but in general the labourers held it in perpetuity.

of course be any rents or service (see *inter alia* a deed of exchange between the Prior of Christchurch and the Abbot of St. Augustine's in Thorn's Chronicle *).

* Thorn, Decem Script. 1949.

The presence or absence of quit-rents in a manor forms a useful test in determining what lands were portions of the demesne, and therefore (in general) not of a gavelkind nature. The test of course may not be sufficient in itself, as certain manors were entirely gavelkind from the first; but where there is already a sufficiency of evidence that the manor and its demesnes were held in francalmoigne, or by a military tenure from the Conquest, or from earlier times, the presence or absence of these quit-rents from particular lands may be very useful in identifying the boundaries of the original demesne.

The services of the tenants of inland and outland differed not only in amount, but in nature, the first being more precarious and servile than the latter. This difference is expressed in the old names: *ben-erth* was precarious tillage-service with horse and cart, *gavel-erth* was tillage-service certain; *ben-rip* is a precarious service of reaping, *gavel-rip* was the same service, only certain. It was commuted for a rent called 'reap-silver[g].'

Both inland and outland are included in the socage tenements or *villenagia*, as opposed to the demesnes or *dominica*[h].

[g] *Gavel-erth:* Account-roll of Reculver manor, 29 E. 1; Somn., Gav., 17; Custumal of Gillingham. *Benerth:* Co. litt. 86 a; Glanville, viii. c. 3; Register of Ch. Ch.; Harleian MSS., 1006; *Custumale Roffense. Gavel-rip:* Custumal of Westwell in Somn., p. 19; Do. of Whitstaple, *ibid.;* Spelman, Glossary, *Benerth, Bid-rip.*

[h] Deed of Henry I., remitting the land-tax on all the demesnes and socage lands of the Archbishop and Monks of Canterbury. (Monast. i. 105.)

The inland is frequently called Bord-land, and in *other* counties "*dominicum villenagium*," or villein-demesne, because it was given out to the

There are many names for other kinds of gavelkind lands, which need not here be explained at length. Such are Monday-land, Tuesday-land, &c., where the tenant worked for the lord on particular days of the week[i]: others merely refer to the amount held by the tenants, e.g. acre-land, rood-land, suling-land: others again refer to the nature of the work required, as Smith-land, and the like.

As to the manner of creating a gavelkind tenure.

The socage tenures of those times, as was mentioned before, were of too inferior a kind to require "land-books," or charters for their creation. "Gavelkind did not pass by charter at all, and the tenure in general was of an inferior character *." Most of the deeds which have descended to us from those early times are unconditional grants in fee with no consideration expressed: "Some, however, contain a mention of what appears at first sight to have been rent (gavel), but a closer examination leads to the belief that these payments were portions of purchase-money to be paid by instalments, or perhaps *gersumes*, i.e. fines, or sums paid down on the execution of the deed †."

* Codex Dipl., Introd. i. 61.

† *Ibid.* 62.

After the Conquest, when the use of written deeds became more general, gavelkind passed by deed as well as other tenements[j]. One of the most ancient examples ‡ of

‡ Gavelk., App. 1.

labourers, who held portions of it at the lord's will. (Bract. 4, tr. 3; Fleta, 5, c. 5.) But this was not the case in Kent, where the labourers on the bord-land or inland were freeholders, even though some of their duties were servile.

[i] Somner, p. 120, and Harl. MSS., 1006, p. 61.

[j] Thomas Sprott, the chronicler of St. Augustine's Abbey (who wrote about A.D. 1274), notices a very ancient grant of gavelkind, which may have been by deed: "Abbas tradidit terram de *Dene* in *gavelkende* Blackmanno et Ethelredo filiis Brithmari, A.D. 1043." (Hearne, *Reliquiæ Sprottianæ*.)

this was extracted by Somner from the Archives at Canterbury.

By this deed Arnulf the prior and the monks of Christchurch (with consent of Archbishop Anselm) granted nine portions of lands in the suburbs to one Calvel and his heirs, at a total yearly rent of 52s., exclusive of the fines to be paid by the said Calvel and his heirs, for any murder or theft committed by them, and any voluntary presents which through piety they might make to the grantors; the rent to be paid by equal half-yearly instalments, and the relief to be fixed at 20s. Two similar deeds follow this in the Appendix to Somner's "Gavelkind."

After the time of Henry II. the form of these deeds was altered to some extent, and the lands were granted with "Tenendum in Gavelikende," five examples of which may also be seen transcribed *verbatim* in the Appendix to Somner, *init.* *

* Bibl. Topogr. Britann. i. 231.

As to the services and rents due from tenants in gavelkind.

Before the Conquest it was not customary to pay rents in money, but in kind; they were trifling in amount, the personal services of the tenants being the most valuable part of their 'gavel,' or tribute. In later times these services were commuted for a money payment, but the precise period of this change is unknown. Rents began to be paid in money soon after the Conquest, and the reign of Richard II. is generally given as the date for the commutations of personal service †: the process no doubt was very gradual.

† Co. litt. 119.

The nature of the ancient services appears from the custumals, rentals, and accompt-rolls of the various manors, or from the registers and archives of the cathedrals and

monasteries preserved in the British Museum, the State Paper Office, and some of the cathedral registries.

The services were of many kinds: among them we can distinguish those of ploughing, reaping, threshing, winnowing, fencing, mowing, carrying wood and provisions, shoeing horses, mending fences, watching for game, going on errands, &c.* The rents were also very various, and distinguished by different names, according to the nature of the produce in which they were originally paid. At the time of the Conquest many of them were turned into money payments†, and were then called Penny-gavel, or *gablum denariorum;* of this kind were the rents reserved in the ancient deeds just cited. Many, however, continued to be paid in kind, e.g. in cocks and hens, oats, barley, meat, bacon, ale, honey, eels, timber, rafters, eggs, &c., and even clothing, shoes, and gloves were occasionally paid as rent by the socage tenants of manors in Kent[k].

* Kemble, Anglo-Sax. i. 323.

† Ellis, Introd. to Domesday, i. 267.

The preceding summary has shewn that the socage tenants were both free and prosperous, especially in Kent. So long as the burgess or the yeoman paid his 'gavel' and performed the service of his tenure, he was safe from expulsion at the hands of his lord. Justice was at his door in the hall-mote or the burgh-mote, and the security of his neighbourhood was maintained by the system of frank-

[k] See the Custumals of Thanet, Adisham, Reculver, Gillingham, Malling, Chertham, West Farleigh, Westwell, &c., cited by Somner, c. i. The freeholders of Minster in Thanet still pay 6d. an acre for *corn-gavel.* (Lewis, Hist. of Thanet, Coll. xxiii.; Somner, Gav., 16.) From gavel-rafter rent is derived by some writers the "gable" end of buildings, for which the tenants contributed the materials. For black-mail, or rent in kind, still used in Jersey, see Somner, 34; Wright, Tenures, "Socage," 2 Inst. 19, 43. Money payments were called blanch-mail or white-ferm, or as in Scotland, 'blanch-holding.' (Steph. Blackst. i. 675.)

pledge, or mutual bail. He took a share in the election of district officers, and in the management of the public affairs of the district; it seems indeed from one record that the gavelkind tenants of Kent were consulted in the affairs of state relating to their county as early as the reign of Athelstane[1].

The customs of gavelkind consist for the most part in following the ancient law of free socage; the later additions to this law must be reserved for another chapter, while we say here a few words as to the laws and usages which the men of Kent have kept "from before the Conquest, and at the Conquest, and ever since, until now[m]."

And, first, as to the statement so often made "by the whole county," that Kentishmen were all free from the earliest times. If this were true there would be now no copyholds in the county, their presence proving that at any rate since the Conquest there were serfs of the demesne. But it is distinctly recorded in "Domesday Book" that there were more than eleven hundred serfs out of a population under thirteen thousand (reckoning only male adults). These serfs were made up of the descendants of the *aborigines*, of those who had been condemned to slavery for crime or in default of paying fines for crime, their families and descendants, and prisoners of war.

[1] "The laws of Athelstane had no effect in Kent until sanctioned by the Witan of the shire." (Thorpe's Anc. Laws, 91.)

A letter was addressed to the king with reference to the laws passed at the Council of Greatanlea, near Andover, thanking him in the name of the bishops and thanes and (*comites*) lesser thanes and (*villani*) yeomen of Kent. If it is doubted whether the last class had anything to do with the legislature of the shire, at any rate it was important enough for its assent to the laws to be recorded. (Hallam, M. A., ii. c. viii. n. 5.)

[m] "Devaunt le Conquest e en le Conquest e totes houres jeskes en ça."—(*Custumal of Kent.*)

Besides these, there were semi-servile classes, such as the cottagers on many manors, who were nothing but tenants at will, and could legally acquire nothing except for the lord's benefit[n]. We shall see that some time after the Conquest part of this semi-servile class was raised with the labourers on the demesne (*bordarii*, tenants of small freeholds) to the status of tenants in gavelkind, but in earlier times they could not be said to have had even personal freedom.

The most important parts of the old law of gavelkind, are those which dealt with alienation, descent, dower, curtesy, and escheat, which in substance still remain unaltered.

1. Alienation.

The feudal severity which forbade a vassal to aliene without his lord's consent was unknown in England before the Conquest, the military system not requiring the support of such a stringent rule.

The land of the thanes, unless settled by the first donor in a certain course of descent, might in general be aliened, but nothing in the nature of an entail could be barred, except with the consent of all who might be interested; there were also some special restrictions on the Church in dealings with land[o].

The tenants of gavelkind might also aliene the land,

[n] *Liber Ecclesiæ Christi*, Canterb.; Cotton. MSS., Vitell. A. v.; Somner, Gav., 72; Lamb. xiv. 528. In 30 Edw. I. it was laid down that there was then no servile class in Kent, and this was pleaded 7 Hen. VI. 33; and it was said that the fact was true, but only by reason of a particular statute. (Fitzh., Villeinage, 46.)

[o] Archbishop Wilfred claimed successfully the right of free alienation without licence. (Somner, Gav., 88.) In general, donations to the Church, if made by the king, required the sanction of the great council; if made by a subject, that of the king or other lord.

if the old rent and services (gavel) were properly secured to his lord.

It may have been necessary in many places to get the previous consent of the lord, but it was usual in Kent for the latter to stipulate merely for a right of pre-emption if the gavelkind land were aliened after the grant [p].

The tenant might devise his land as well as aliene it by conveyance *inter vivos*, provided it was not part of the inheritance of his ancestors [q]. It must be remembered that a will was then in its nature precative, and therefore required a preceding heriot-clause to secure the lord's support. If no heriot were bequeathed, it seems that in general the lord might share with the family the real property of the deceased, and divide his goods and chattels as he thought fit: in Kent, however, a definite ratio for the division of personal property among the family had been established by law or custom *.

* Laws of Canute, pt. ii. c. 68.

[p] A clause to this effect is found in a very ancient deed, extracted by Somner from the Canterbury Archives, Append. ii. Wibert the prior, and the monks of Christchurch granted certain land in socage in these terms: "Tenebit prædictus G. de nobis has terras bene et in pace et honorifice jure hereditario per supradictum censum, et licebit ei de ipsis tanquam de propriis facere quod voluerit, salvo jure et redditu nostro. Ita tamen quod si eas alicui dare voluerit vel vendere nobis prius hoc indicabit, et nos ad emendum eas proximiores esse debemus." A similar clause is cited from *Leges Burgorum apud Scotos*, c. 100.

[q] "Emptiones vel acquisitiones suas det cui magis velit. Terram autem quam ei parentes dederunt non mittat extra cognationem suam." (Wilkins, *Leges*, Hen. I., c. 70.)

That remnant of the clan-system, once universal, and still known to some European countries, prevented freedom of devise from extending to any great impoverishment of the family.

Under the Norman kings a man might not even devise his purchases, unless he left sufficient to support his heirs; it was felt that every owner of land was in a manner a trustee for his family. Thus Glanville: "Si questum tantum habuerit is qui partem terræ suæ donare voluerit tunc quidem hoc ei licet; sed non totum questum: non potest filium suum hæredem exhæredare." (lib. vii. c. i.)

A certain portion of the chattels might be bequeathed (after payment of debts) to pious uses, or otherwise at the direction of the testator. This part could not exceed one third if wife and children were left, the wife taking another third, and the children dividing the remainder. If only a wife survived she took half, and the rest might be freely bequeathed *. The same proportion was observed in dividing the goods of intestates [r].

* Glanv. vii., c. v.; Magn. Ch., c. xviii.; 2 Inst. 33; Somn., Gav., 96.

A tenant in gavelkind attained his majority at fifteen years, a year later than tenants in inferior kinds of socage; in many boroughs a much earlier age was fixed by local custom.

2. Descent.

The partition of lands in descent between all the sons, and failing them between the daughters, was the universal law of socage descents in England until comparatively late times; nor was it peculiar to England, being found in the lands of the *roturiers* of France †, as well as in other parts of Europe. There was, however, one peculiarity of the old law of gavelkind, which was perpetuated for some time in Kent, though long since obsolete, viz. the allotment of the dwelling-house to the youngest parcener as by the custom of borough-English, discussed more fully in the chapter on burgage. Nor was the partibility confined to children, the doctrine of primogeniture being quite unknown to the Saxons in lands of this tenure, so that all the heirs of equal degree took as parceners, the males being preferred to the females ‡.

† Establ. de St. Louis.

‡ Robins., Gav., c. vi. (Wilson's note, 2).

[r] "Seient les chateus de gavelckendeys parties en treis apres le exequies e les dettes rendues, si il y eit issue mulier (*legitimate*) en vye, issy que la mort (*the deceased*) eyt la une partie e les fitz e les filles mulier lautre partie, e la femme en vye la tierce partie."

"Et si nul issue mulier en vye ne scit, cit la mort la meitie et la femme en vye lautre meytie." (Kentish Custumal.)

3. Dower.

The dower of Saxon times was not quite the same as that of the later law; it corresponded rather to that customary dower or free-bench which has remained in certain boroughs and on many copyhold manors from those ancient times. The widow had her "reasonable part" of the chattels of the deceased, which no testamentary disposition could take from her; and it was also considered expedient that she should have a definite share of the lands which her husband had inherited and owned at the time of his death, for her own maintenance, and the sustenance of her younger children. It is probable that lands which her husband had himself *purchased*, were not liable to this dower or free-bench; in these the widow's part was already fixed at one-third if there were children, one-half if there were not, as in the case of personal property. The proportion of the inherited lands taken by the widow varied in different places; in some boroughs she took all; in others (as in London), while the house went to the youngest heir, the chief room was reserved as "the widow's chamber;" but in gavelkind lands she kept one full moiety during her life, chastity, and widowhood. Thus it is said in the Kentish Custumal, "if *such* tenant in gavelkind (i.e. one taking by descent) die, and leave a wife surviving him, let her straightway be endowed by the heirs of one-half of the tenements of which her husband died seised, if the heirs be of age (or by the lords if the heirs be not of age), so that she may have the half of those lands and tenements to hold so long as she keepeth a widow, or until she shall be attainted of childbirth after the ancient usage, &c."[a]

[a] "Et si nul tiel tenant en gavylekend meurt e eit femme que survive, seit cele femme meintenant douwe de la meitie des tenementz dont son baroun morust seisi per les heirs si il seient de age ou per les seigneurs si les heirs ne seient pas de age, issi que ele eit la meitie de celes terres

4. Curtesy.

The estate of the husband in the lands which had descended to his wife differed also in several particulars from the ordinary curtesy of England (*per la lei D'Engleterre*) in socage tenements, being much more like the customary free-bench which is now used in copyhold; the curtesy of the tenant in gavelkind is constantly called free-bench (*francus-bancus*) in old cases[t].

The old law of socage, still retained in Kent, gave to the husband surviving one-half, not the whole, of the wife's inherited land, and the birth of inheritable issue was not necessary to perfect the husband's inchoate right, as is usual elsewhere, nor could he keep the land after another marriage. In lands which the wife had purchased the husband would in those times need no curtesy, having already his "reasonable part" of these, as well as of her chattels. This may be gathered from the words of the Custumal setting out the traditional law, "And they claim also that if a man takes a wife, who has *inherited* gavelkind land, and his wife die before him, the husband shall have the half of those lands and tenements, of which she died siesed, so long as he remains a widower, without doing any (strip or) waste or suffering exile, whether there were any issue between them or not; and if he takes another wife, he shall lose it all[u]."

5. Escheat.

Although the severity of the feudal law respecting es-

e tenementz a tener tant come ele se tyent veuve ou de enfanter seit atteint per le auncienne usage," &c.

[t] De Bending *v.* Prior of Christchurch, *infra.*

[u] "E clament auxi que homme que prend femme, que eit heritage de gavylekend, e la femme murge avant luy, eit le baroun le meite de celes terres et tenementz tant comme il se tient veufver dont ele morust seisei saunz estrepement ou wast ou exile fere, le quel kil y eit heir entre eux ou noun, et si il prent femme trestout perde."

cheat for felony and attaint of blood was unknown in England before the Conquest, there were several occasions upon which the tenant's socage land escheated to his lord. In the case of those who owed military service, cowardice in battle was followed by forfeiture of their allodial land to the king; and by an analogous process, the land of the tenant of gavelkind who neglected the payment of his rents, &c., escheated to the lord. There were three ways in which gavelkind tenements might escheat, viz. intestacy and want of heirs, cesser of services, and felony for which the culprit avoided a legal judgment.

Of these, the first is merely the escheat *propter defectum sanguinis*, known to the common law. The second and third bear a great resemblance to the later "escheat *per delictum tenentis*," but were unaccompanied by corruption of blood, the fiction of a later age.

The Kentish Custumal speaks of escheats by failure of heirs and devisees, by gavelet, and by felony.

Escheat by gavelet, which resembles the result of proceedings on a *writ of cessavit*, now obsolete, was when the lord recovered the land of a tenant neglecting his rent and service.

At each three-weeks' court successively the lord sought for a distress upon the land; if none were found after three searches, he kept the land as a distress or pledge for the rent for a year and a day; if the tenant still made default, the lord, after solemn notice in the county court, might take the land with the consent of the freeholders of the manor, and treat it thenceforth as part of his demesnes, free from all nature or tenure of gavelkind.

This process, long since rendered unnecessary by simpler modes of recovering rent, is said to have been obsolete in Kent for at least three hundred years.

CHAPTER IV.

Gavelkind.

The word 'Gavelkind' used in different senses.—Great confusion has resulted from this.—Socage before the Conquest.—The ancient Socage of Kent.—The customs of Gavelkind.—The custom of partible descent in Kent.—Similar customs in other parts of England.

A CONFUSION has arisen in many arguments upon the nature of gavelkind, from the fact that the word has been constantly used in several different senses.

It is often forgotten that, properly speaking, *gavelkind is the tenure of socage according to the customs of Kent, and not merely a peculiar mode of descent known upon frêehold and copyhold alike in several counties.*

When it is once clearly shewn to be a tenure, and not merely a custom, it will be seen how impossible it is for land and tenements to have been from the Conquest till now held in two tenures simultaneously; in other words, for the custom now to attach itself to lands proved to have been held from the beginning to the end of the feudal system by ancient military or spiritual services, in chivalry or in francalmoigne. Only an *ancient and original* socage tenure is imbued with the qualities of gavelkind.

There are five different significations which have from time to time been used as synonyms of gavelkind, and a brief discussion of them in order may help to remove the confusion mentioned above.

This word has been used in the following different senses, of which the first and second are alone strictly correct.

1. *Socage tenure before the Conquest.*
2. *Immemorial socage tenure in Kent.*
3. The body of customs allowed on ancient socage lands in Kent.
4. The customs of partible descents in Kent.
5. Any custom of partition in any place.

I. Before the Conquest the lands of England were either allodial or tributary (gavelkind), either free or encumbered with services and rents. In the same way the only broad division of society known at that time was that of earls and churls (*eorlish* and *ceorlish*), or nobles and rustics; the possession of free allodial land was the only title to nobility, and even the rent-paying rustic, "the churl who on gavel-land lived [a]," on gaining an estate of his own, sufficiently large to maintain one soldier for the state, became noble, and had all the rights of a well-born gentleman. Ownership of land, as in the later times of feudalism, was held to ennoble the blood.

[a] Alfred's Treaty with Guthrum, Wilkins' Anc. Sax. Laws.

The tenants in burgage, a species of town socage, could seldom hope to acquire so much land of their own, and to them therefore this special favour was granted, that a burgess who served the State by making three trading voyages beyond the sea, became *ipso facto* a thane or gentleman.

It was usual for the lord of a manor to retain for his own use a portion, afterwards called the demesnes, and to let the rest out to his rustics as gavelkind, or, as it was often called, *læn-land* (lent-land), i.e. lent for rent in money or services [a].

[a] A good description of these rents and services was extracted by Kemble (Anglo-Sax. in Eng., i. 323), from the valuable document called *Rectitudines Singularum Personarum*. It tells us that the services of the gavelman, or socage tenant, varied according to the custom of dif-

It was however common (at least under the later kings), for a ceorl or yeoman to acquire a whole manor of his own, and this appears from numerous entries in Domesday Book; in such a case, before the Conquest, the land would naturally cease to be gavelkind, and be after the Conquest transferred with other lands of the thanes to military tenants, or to the Church to hold in barony or in free alms. Such manors seldom had anything in demesne at the Conquest, and therefore at the present time the *land* in such manors is gavelkind, though the *manors* themselves are free, for not having been in demesne at the Conquest it must have lain in socage. Though in general the lands of the Church and the nobles were essentially free from rents or service of any kind (except the *Trinoda Necessitas*), yet it was competent for everyone to hold particular lands by the inferior tenure. Accordingly we find instances of lands held by rents of money, grain, honey, and the like, by the prelates and nobles; but as a general rule, the higher classes kept to the higher tenure, and the rustics to the lower.

II. The second sense in which the word gavelkind can be used, with propriety, is the ancient tenure of socage as preserved in Kent. This really differs very little from the rustic tenure just described. The services have been commuted, and some new incidents introduced from time to time, but in the main it is the same as in the reign of the Confessor. It is important to remember that gavelkind is a tenure, not a custom; it is socage on which

ferent parts: "In some places he must pay a yearly money-rent (land-gavel), &c.; he must ride, carry, and lead the horse, and load the cart, work for his lord, and gain him food, reap and mow, cut the park palings, watch for deer, build and enclose the manor-house, make the roads, pay Church-dues and alms-fees, and go on errands far and near."

have been preserved the laws and customs of the Saxon yeomen, "so that the partibility and other customary qualities are rather extrinsic and accidental to it, than necessarily comprehended under its name *."

* Rob. Gav., 5.

It will be probably worth while to look at a few of the best authorities for saying that gavelkind is a Kentish tenure, and not a custom, or a body of customs.

1. It is said to be only a *species of socage modified by the custom of the country*, the lands being held by suit of court and fealty, which is a service in its nature certain †.

† Wright's Tenures, 214.

2. Littleton ‡ distinguishes between the tenure and its incidents in these words: "The *custom* of partition in lands or tenements, which are of the *tenure* of gavelkind in the county of Kent;" and in the disgavelling Act, 31 Hen. VIII. c. 3, the lands, manors, and tenements of the persons therein named, are directed for the future to be descendible like other (knight-service) lands "which were never holden by service of *socage*."

‡ §. 265.

3. Again, the ancient charters, (quoted in Somner's Appendix, and *Biblioth. Topogr. Britannica*, i. 236,) by which lands were granted to Herbaldown Hospital, being of gavelkind nature before, *tenendum in perpetuam eleemosynam*, are illustrations of the same rule, "the *tenendum* being the proper place in all deeds for creating a new, or specifying the old tenure, and originally intended for no other purpose §;" the distinction between the tenure and the custom is preserved in the record of a case *Ass. in Com. Kanc.*, 12 Rich. II., where the tenant of the lands pleaded in bar, that they were "De tenurâ de gavelkind, et dicit quod habetur ibidem talis consuetudo," &c.—(*Spicer* v. *Marshall*, *Ass. in Com. Kanc.*, 2 Rich. II.)

§ Somn., Gav., 37, 38; Rob., 6; Sandys, Cons. Kanc. 167.

4. There are also many cases extant where gavelkind lands in Kent are merely described in the pleadings as

being *freehold and socage*, instead of the usual form, i.e. "of the tenure and nature of gavelkind." Thus in the case of *Alged* v. *Rike* * the gavelkind customs of guardianship were allowed, though the land was only pleaded to be *liberum tenementum et in socagio*. Socage and gavelkind are often used as synonyms in reference to Kentish lands, e.g. "Terræ quæ tenentur in socagio vel gavelikende †;" and Bracton, speaking of *Isabel de Gravenel's case* in the reign of Henry II., declares that the custom of Kent is for the widows to have free-bench in socage lands (*in terris sockmannorum*) during their lives and chastity, and after a few sentences speaks of this free-bench "in socage" as *Dos de Gavelkind* ‡. Besides these instances, which might be indefinitely multiplied, we find a constant uniformity in all records prior to the reign of Henry VIII. in confining the name gavelkind to ancient socage in Kent; and in the pleadings of all cases affecting such lands before that time, it is observable that they are described as gavelkind, whereas concerning lands in other counties in which a custom of partible descents prevailed, it was only pleaded that they were "partible, and had been parted." "Which universal conformity of the books and records in applying the name to *Kentish* lands, but never to make use of it as to any others, could hardly have arisen by chance, were the name equally proper to both §."

* Rob. 243.

† Close Rolls 37 Hen. III. 19.

‡ Lib. iv. tract. 6, c. 13, 15.

§ Somn. 53. 100—151.

III. The third manner in which the word has been used, constantly, and in some cases very anciently, makes it mean "the whole body of customs common on gavelkind land." These have been so often pleaded and allowed as the customs of gavelkind, that it has become common to speak as if gavelkind itself were but a set of customs, instead of the tenure on which the existence of such a body is allowed. This is a confusion between the

tenure and its incidents, which is not warranted by the Custumal of Kent, which ends with these words: "These are the usages, &c. which the *Commonalty* of Kent (i.e. not the thanes and prelates, or the barons, knights, and tenants in free alms of a later time, but the small freeholders of the county, the yeomen farmers and labourers) claims to have in the tenements and in the men of gavelkind[b]."

IV. The great prominence which has naturally been given to the custom of partible descents in lands of this tenure has led many to use the word as a mere equivalent of "the Kentish custom of partibility." We find no such exclusiveness in the language of the Custumal itself, nor is this manner of partition even mentioned in it till nine other peculiar usages of the county have been recorded. In the case of *Wiseman* v. *Cotton*, 1 Sid. 138, it was expressly said that the custom of devise, not that of partible descents, is "the mother-custom in gavelkind."

Remembering that until the time of Henry II. all socage estates descended equally among all the sons, which is said in the Mirror * to be part of our ancient constitution, we see that there would have been no need to notice specially this partibility of the land in Kent, except on two grounds, viz. (1.) The Kentish usage was not a mere partition, as it has come to be in our time, but it was curiously mingled with a custom of borough-English, (see *post*, Chapter on Burgage,) and (2.) In the reign of Edward I., in whose twenty-first year the body of Kentish usages, *as we now possess them*, was formally allowed, the partition of ordinary socage lands had already become ob-

* C. i. §. 3; Co. litt. 14 a; Steph. Black. i. 401; Plowd. Comm. 229; Wright, Ten. 142; Hale, C. L. 257; Glanvil. vii. c. 3.

[b] "Ces sount les usages . . . les ques le communaute de Kent cleiment aver en tenementz de gauylekende e en gentz gauilekendeys."

solete, and given way before the feudal doctrine of primogeniture, so that it was really necessary to place it upon record in Kent as part of that old common law, which the men of that county are privileged to retain [c].

Thus when partition of socage had become singular, instead of the general usage, it came easily to be regarded as the essence and prime quality of gavelkind, and a practice grew up of trying the nature of lands in this tenure, not by the rents and services, which are and always have been really essential, but by "the touch of some former partition."

Moreover it is probable that the majority of cases arising upon lands of this kind were, as in our own time, concerned chiefly with the partible descent.

Again, the disgavelling acts, being construed by the judges (in *Brown* v. *Brookes*, 2 Sid. 153, and *Wiseman* v. *Cotton*, 1 Sid. 138) to affect the descent only of the lands disgavelled, contributed still more to exalt unduly this custom above the rest.

For these reasons, and because the custom of partible descent, so to speak, "thwarted the course of the common law" as established in later times, the confusion became possible as to whether indeed gavelkind were a Kentish tenure or a local custom of partibility [d]. It is also not

[c] A clear explanation of this point is given by Wright: "The partible quality of *most* of the lands in Kent was not a particular or proper effect of gavelkind tenure; and how particular soever the continuance of this course of descent may appear to us at this day, yet if we consider gavelkind as a *species* of socage tenure, and that all tenures by socage, or of the nature of socage, were anciently in point of succession divisible, it will appear much more extraordinary that all other counties should depart from this the most ancient and natural course, than that this particular county should retain it."—(*Tenures*, 214.)

[d] Somner has some quaint reasoning on this: "That very improper and incongruous question was occasioned by the want of a distinction be-

unlikely that this mistake was helped by a habit of separating in thought the tenure and its customs, which prevailed among those who had received a false notion that they were of different dates. Many, who would at once acknowledge that the tenure was well known before the Conquest, were perplexed by a vague tradition, that its customs were introduced afterwards; in contradiction to the final sentence of the Custumal, "These be the usages of gavelkind ... which were before the Conquest and at the Conquest, and ever since until now:" ("Ces sount les usages ... que furent devaunt le conquest e en le conquest e totes houres jeskes en ca").

[*] Peramb. 545.

Thus Lambarde[*] thought that these customs were imported by Odo of Bayeux from the *Grand Coustumier* of Normandy, a compilation now assigned by all to the period of Richard I., and he and many others have repeated that "still more fabulous story of the Kentish men's composition with the Conqueror by means of the surprise of the moving wood of Swanscombe," a well-known anecdote, which rests on the sole authority of Thomas Sprott, or Spot, the chronicler of St. Augustine's Abbey in Canterbury: he lived in the reign of Edward I., and wrote *circa* A.D. 1274; and his narrative, besides being late, is full of evident falsities and improbabilities[e]; whereas the customs

tween the *genus* and the *species*, which through inadvertency are here confounded, gavelkind being the *genus* and partition the *species*. So that, if we shall but *reddere singula singulis*, the doubt will quickly have an end; gavelkind generally spoken of and in gross is the tenure; particularly and with reference to this partition it is a custom accompanying the land of that tenure. Or, if you will, gavelkind is the tenure, partition and the other properties the nature," (referring to the mode of pleading, that the said land is "of the tenure and the nature of gavelkind.")—*Somn.*, *Gav.*, 146.

[*] See the remains of his chronicle, *Reliquiæ Sprottianæ* in Hearne's collection, and a discussion of their merits in Somn., Gav., 63—82.

of gavelkind are as old as the tenure, both being (in the words of Littleton, §. 210) "a use out of mind of man."

V. The last, and perhaps the commonest misuse of the word, is to make it a mere equivalent to any custom of "partibility" wherever found, in Kent or in any other county in England or elsewhere, and on copyhold and freehold lands alike. This was unknown, as has been said, before the reign of Henry VIII., when it was decided according to the report which we have received of the case of *Wiseman* v. *Cotton*, 1 Sid. 138, 1 Lev. 80, that "the *custom of gavelkind* is in other countries and towns as in Ireland, Wales, many towns in Sussex, &c." This case was founded entirely on the Disgavelling Act of 31 Hen. VIII., c. 3, in which it must be remembered, that although the *custom of gavelkind* is mentioned, yet so also is the *tenure* of gavelkind. But the judges, having considered the effect of this act, decided that partibility must be the essential part of gavelkind, because though it existed in other places, yet partibility was the only common point in which all these *species* of the tenure outside the county of Kent agreed. They seem not to have taken much notice of the important fact that the name of gavelkind in the early pleadings is restricted to the ancient socage lands *of Kent*.

There are many partible lands in different parts of England, to which the name of gavelkind was not in early times applied, although no doubt their customs were derived from the same source as those of Kent. Such customs do not form part of "the common law of the county," like the usages of gavelkind: they are traversable, and are not noticed by the law unless specially proved. In some parts the custom of partition did not even come from the old Saxon law, but is a remnant of ancient Celtic usages,

which have merely a slight resemblance to the Kentish law, which has now lent them its name. Such is the gavelkind of Chester, Usk, Trelleg (in Monmouthshire), and Urchenfield (in Herefordshire), which is evidently borrowed from the ancient "custom of Wales." Urchenfield was a Welsh principality at one time, and its gavelkind is spoken of as *Consuetudo Wallensium* *.

* Pasch. 9, E. 1, Heref. 32; Taylor, Gav. ii. 44, 110.

Round the borders of Kent the tradition of ancient tenures has remained in many copyholds, where the lands in descent are divided among all the sons, "as in gavelkind." Such a custom exists in Rye and other places in Sussex, at Mile-end, and in several other manors round London. It is said that such a custom gave its name to *Kentish Town*.

The custom is common in Norfolk, especially in the lands once belonging to the fee of the Marshal of England, in several parts of Suffolk, in the district round Oswaldbeck in Nottinghamshire, and at Rothelay in Leicestershire.

In the Custumals of Stepney and Hackney, drawn up late in the seventeenth century, it is expressly termed "the custom of gavelkind."

It is also common in the west of England, being known at Taunton Dean and other places in Somerset, in Gloucester, in Exeter until its abolition (23 Eliz., c. 12), at Wareham in Dorset †, and over all the Isle of Portland, the home of many other ancient customs.

† Taylor, Gav., 101.

As to the Irish "custom of gavelkind," mentioned in *Wiseman* v. *Cotton*, it must be always remembered that there is the merest accidental coincidence of name between it and the Kentish tenure. The Irish had originally no tenure of socage, but shifted the land on the death of an owner, not among all his sons alone, but among all the males of his clan; and not equally, but according to the

discretion of the head of the clan. There was no certain possession of land, but the death of any one clansman might alter the estates of all the rest. Moreover, we learn from Sir J. Davis [f] that there were other differences, besides this great one of the principle of division, between Irish and Kentish gavelkind.

1. Bastards inherited, or rather took their shares according to the chief's discretion, with the legitimate relations of the deceased.

2. Females had no claim to take by descent in any case, and by a parity of reasoning wives were excluded from dower [g].

For all which reasons the judges, in the Case of Tanistry, 5 Jac. I., declared that this Irish custom was void, not only for the reasons already stated, but because it was a mere personal custom, not running with the land as in gavelkind proper, and therefore not strong enough to alter the descent of the inheritance *. * Rob. 20.

By one of the penal statutes against Roman Catholics in Ireland the usage was revived, 2 Anne, c. vi. §. 10, to this extent: it was enacted that the lands of Roman Catholics should be divided among all the sons *as in*

[f] Report on Irish Gavelkind, fol. 49.

[g] Although this exclusion of females from taking by descent and in dower were held to be contrary to law, and void as against the nature of fee-simple, it is curious to remark that a similar exclusion of females was allowed to be a good custom in an English copyhold, (*Newton and Shafto*, Rob. 19; 1 Sid. 167, and *Simpson and Quinley*, Rob. 19; 1 Vent. 88; 2 Keb. 672,) "for the estate being created by the custom, it may be modified by the custom; but in lands held in fee at common law, such a claim would have been held void and unreasonable, it being against the nature of a fee to escheat, as it might in such a case, while heirs female were in existence."—(1 *Sid.* 167.)

And in the Custumal of Stepney and Hackney, an exclusion of wives from dower or free-bench was allowed.

gavelkind, unless the heir should be a Protestant. But this was happily repealed by the Irish statute, 17 and 18 Geo. III. c. xlix. §. 1 *.

* Co. litt. 176 a; Harg. note.

The name of gavelkind was also used merely to signify partibility in the statute, 34 and 35 Hen. VIII. c. xxvi. §§. 91, 128, respecting Wales. But it is clear that as to this Welsh custom, the name was used in a way unknown before, the *Statutum Walliæ*, 12 Edw. I., using the more exact expressions of *terra partibilis*, and *Consuetudo Wallensica ante usitata* †. (This statute abolished the Welsh customs of descent to bastards, and exclusion of wives from dower, as in the Case of Tanistry; but the partible descent was allowed until 34 and 35 Hen. VIII. c. xxvi.)

† Co. litt. 176 a.

From these instances we may establish the rule that gavelkind is proper to Kent alone, and that those places where a custom of partible descent prevails, are not gavelkind, in any strict legal sense. Several other cases were collected by Robinson in support of this plain distinction. As *Ralph de Colby's Case*, concerning certain lands in Norfolk, where it was said, "that in gavelkind it is not necessary to shew an actual partition, because in Kent the tenements are partible by usage of the country;" but in this case the custom was alleged only in certain towns, &c., and therefore it was necessary to shew that the lands had actually been parted.

And in a similar question respecting lands at Gelfy, it was ruled that "it is not of these tenements as of tenements in gavelkind, for *there* of common right they are partible." And in 8 Edw. III., as to an estate in Saxham (Suffolk), it was said, "You cannot draw them out of the common course of law, if you cannot shew between whom the custom was so used, unless you can allege the usage of the whole country *as in gavelkind*."

In the same way Bracton iii. 374, and Fleta vi. c. xvii., draw a distinction between gavelkind and mere partibility: "Sicut in gavelkind, vel alibi ubi terra est partibilis ratione terræ." And Somner says, speaking of the same distinction:—

"In the vocabulary of the Welsh we seek the word in vain, as also in the *Statutum Walliæ*, where though mention may be found of a custom *like* gavelkind, yet without one word of *gavelkind*. It was first transmitted thither by our lawyers, who borrowed the term to make use of it for illustration's sake, like as of late . . . in 34 Hen. VIII. c. 36, where the term is but borrowed, to help describe and illustrate that partible quality there mentioned, which I am the more induced to conceive, because in a former statute (27 Hen. VIII. c. 26) making mention of this partition, *gavelkind* is not at all remembered*."

* Somner, Gav. 54.

So that we may conclude that this confusion of gavelkind with partibility, and with tenures of land beyond Kent, is a loose and untechnical habit, helping to divert the attention from the true meaning of the word, and causing some even to maintain the possibility of the customs of gavelkind existing on lands not presumed to have been originally of that tenure[h].

Here we may consider the value of a remark commonly made that "all lands were gavelkind before the Conquest." In the now current use of the word as a synonym of 'partible,' there is of course much truth in it, for primogeniture was certainly not established in those times, and we know that the lands and other property (real and personal) of an intestate were divided among the heirs male, though we have not all the details of their principle of division. In the laws of Canute (145) it was enacted, "If a man fall in presence of his lord in battle, let the heriot be forgiven,

[h] Lamb. Peramb., 535; Rob. 63.

and let his heirs take the land and chattels and shift them most according to right," i.e. by the light of the laws and usages of that portion of England to which the deceased belonged. It was usual to make a will, bequeathing a heriot to the lord "that it might stand," and marking out the shares of the relations; but where an owner of allodial land died intestate, it is probable that his sons would take in equal shares, as we know to have been the case with gavelkind or socage land.

There are frequent instances in "Domesday" of males holding in coparcenary, or as it is there expressed, *in paragio*[1]. We may grant for the sake of the argument, that all lands before the Conquest descended *as in gavelkind* at the present day, yet that does not make it correct to say that *all their lands were gavelkind.*

We cannot construe the saying in any other way, without confusing the spiritual tenure of the Church and the half-military tenure of the thanes, with that of the husbandman bound down to certain rents and services. It would be more correct, and would have saved some confusion, if greater accuracy had been used. "Before the Conquest all the lands in Kent were divided equally among the males;" excepting, of course, the francalmoigne lands of the Church, which were given in perpetuity, "free from all earthly services."

[1] D. B. i. 63 b, "Tres allodiarii tenuerunt in paragio de rege," and similar notices, i. 7, 45, 46, 96, 111 b, 168, 375, &c.

CHAPTER V.

The Norman Conquest.

Introduction of the Feudal System into Kent.—Retention of Tenures in Francalmoigne, Drengage, Burgage, and Socage.—Changes in the three latter Tenures.—Drengage.—Its importance to an enquiry into Gavelkind.—Letter of the monks of Christchurch to Henry II.—Changes in the law of Gavelkind.—Escheat.—Forfeiture.—Alienation.—Devise.—Descent.—Dower.—Curtesy.—Presumption that lands in Kent are Gavelkind.—Instances of its application.—Cases where it is not allowed.

It is most important in all enquiries as to the nature and extent of gavelkind tenure, to start with a clear view of the state of Kent immediately after the Norman Conquest.

The tenure of the Church-lands, with a few exceptions, became military; the lesser thanes became knights, and the socage tenures of the yeomen and rustics were altered to suit the new system, though to a much less extent in this county than in the rest of England.

In the next place, the limits of gavelkind were substantially fixed at that time, a long train of decisions having established the rule so often quoted in these chapters, that what was socage at the first is gavelkind now, and what is proved to have been then in a tenure superior to socage is not gavelkind.

There is no need here to give a minute account of the system followed by the Conqueror in consolidating the feudal system, which had only existed here in an imperfect form before his reign. It is enough for the present to say, that the higher tenures of Kent were made liable

to military services, &c., throughout the county, with this exception, viz. for special reasons one or two corporations were permitted to hold on their estates in free alms or francalmoigne, and the lesser thanes *on those estates* (*drengs*) seem for some time to have retained their free allodial tenure.

Socage holdings were in a great measure feudalized[a], without however losing their distinguishing characteristic, certainty of service. The ancient demesne of the Crown was taken over by the Conqueror, and held by him in the same manner as by his immediate predecessors. Thus, after all the changes introduced immediately after the Conquest, the land continued to be held by the same classes as before, and in the same proportions, though not by the same persons. The old crown-land, of which very little was given to the new barons, constituted the royal demesne; the thane-lands of the bishops, monasteries, and the three classes of lay nobles, were all alike held by service of chivalry, except those few which certain monasteries by special favour retained in francalmoigne, and those small estates which for a few reigns continued to be held directly of the Crown "in drengage," as the lesser thanes had held them before the invasion. The socage lands of husbandmen continued, at least for some

[a] The boundaries, however, of the lands held in socage, and the lands in a tenure above socage, were not disturbed; the former might still be described in the same terms as before the Conquest: "Terram censualem, tributariam, reditui annuo ceterisque plebeiorum prædiorum obnoxiam, ac Saxonum *Gafol-land* respondentem de quâ in fœdere Aluredi et Guthruni, c. 2, &c." And the lands of the nobles and gentry, though no longer called thane-land, yet answered to its old description: "Terra hereditaria, colonorum servituti non obnoxia." (Wilkins' Anglo-Sax. Laws.) The Conqueror did not increase or diminish the amount of the lands which were not gavelkind.

time, to be held by the same class, now called *villani*, and the condition of the serfs (a small part of the population) was hardly altered until some time before the reign of Richard I. A good many of the smaller sort of 'villeins' had degenerated into the class of serfs, a circumstance which no doubt must have bettered the position of the latter class.

Before considering the tenants in free alms and by military service, we must say a few words respecting the drengs, or lesser thanes, who continued for some time to be of importance in Kent, and a discussion of whose tenure will serve to illustrate the true distinction between the free lands and the gavelkind of the county.

Spelman in his "Glossary" describes these men as a class of small freeholders, who did not hold in socage, and whose tenure was undisturbed by the Conquest, "those who neither by word or deed impeded the success of the invaders;" on proof of this, he says that the king allowed them to hold their lands as freely as in the Saxon times, and that they retained the title as well as the immunities of drengs or lesser thanes, without being liable for feudal services and duties.

Though the genuineness of the particular record, a history of the Saxon family of Sharnborne, on which Spelman, Dugdale, and other antiquaries relied, has been much disputed, and indeed is now disbelieved by very eminent authorities, the truth of the theory asserted by Spelman is admitted on all hands[b].

[b] The chief authorities for it are Spelman, Gloss., (title 'Dreng'), and Posth. Treatises; Wright, Tenures, 62; Somner, Gav., 125; Hale, C. L., c. v. Against it, Hume, Hist., i. 114; a tract by Dr. Brady asserting it to be forged; Tyrrel, Hist. Engl., ii. 51; Sir H. Ellis, Introd. to Domesday, i. xviii.

Much of the country was left in the hands of the old nobility and their dependents, and the Norman writers* complained that the English had kept the best part. In fact, the Conqueror appears to have found that without any great hardship to the mass of landowners, enough land was legally forfeited by what was called the treason of opposing in arms the claim of William, to satisfy the new order of nobility. In course of time fresh rebellions produced fresh forfeitures, and a strict construction of the general oath of fealty, imposed when the English system of feudalism was finally settled, warranted the lawyers in approving the confiscation of all the property of Harold's adherents. In general, the order of society was not practically altered; one set of nobles was replaced by another set of nobles, in many instances the old owner becoming the principal tenant of the Norman baron[c].

* Ord. Vit. ii. 260; Dial. de Scacc. i. c. 10.

The record is as follows: (it may be found in Hale's Common Law, c. v., as well as in Spelman):—"Edwinus de Sharborne, et quidam alii qui ejecti fuerunt et terris suis, abierunt ad conquestorem et dixerunt ei, quod nunquam ante conquestum, nec in conquestum, nec post, fuerunt contra regem ipsum in concilio aut in auxilio, sed tenuerunt se in pace; et hoc parati sunt probare qualiter rex vellet ordinare; per quod idem rex facit inquiri per totam Angliam si ita fuit, quod quidem probatum fuit. Propter quod idem rex præcepit, ut omnes ille qui sic tenuerunt se in pace in formâ prædictâ quod ipsi rehaberent omnes terras et dominationes suas adeo integre et in pace ut unquam habuerunt vel tenuerunt ante conquestum suum, et quod ipsi in posterum vocarentur Drenges."

[c] Sir M. Hale collected several instances where Saxon title-deeds were allowed after the Conquest, "and titles made and created by them to lands, &c., were affirmed and adjudged under William I. Many recoveries were had shortly afterwards, as well by heirs as successors, of the seisin of their ancestors and predecessors." Many English names occur in Domesday Book, e.g. in Kent, Sussex, Hampshire, Wiltshire, &c. (7 Edw. III., Fines, in Seld. Eadmer.)

Mr. Pearson quotes the *dictum* of Judge Shardelowe, in the reign of Edw. III., as affording a good account of the general effects of the Conquest, from Mumford's "Domesday of Norfolk," 62:—

The Church, except where special offence had been given, retained its old possessions: had it not been so, the monks and prelates would have complained. But no such complaints are extant. On the other hand, the monks, as will shortly be seen, appealed to charters of the Saxon kings in proof of their title, the Conquest having made no such sudden change in the law, that the force of ancient evidences could be in any way impaired. As late as 7 Edw. I., in proceedings on a *Quo Warranto*, the Abbot of St. Augustine's at Canterbury was permitted to rely on a charter of Canute.

In the case of *De Bendings* v. *Prior of Christchurch*, given in another chapter at length, the jury found that the manor of Westwell had been given in free alms to the priory by the King's predecessors, *scil.* Queen Ediva, wife of Edward the Elder (961), and (confirmed by) Edward the Confessor.

And in the well-known trial called the Pinenden Plea, before the Sheriff of Kent and the whole county, the Archbishop recovered the manors and lands, of which his see, and that of the Bishop of Rochester, and their respective monasteries of Christchurch and St. Andrew's, had been forcibly deprived by the Conqueror's half-brother Odo, then Earl of Kent * [d].

The necessity for this action (the Pinenden Plea) shews that though the law was in theory unaltered, in practice

* Lamb., Peramb. 221; Selden, Eadmer, 19.

"Le Conqueror ne vient pas pour ouster eux qui avoient droiturell possession, mes de ouster eux que de leur tort avoient occupie ascun terre en disheritance del Roy et son cozonne."—(*Early and Middle Ages of England*, c. 22: *cf. Hale, C. L.*, c. 5, passim.)

[d] A very full account of the Pinenden Plea was compiled by Philipot, the Kentish antiquary. It may be seen in the British Museum, Lansd. MSS. 269, a valuable record "of great use for the county of Kent." (MS. note on margin.)

acts of robbery against the Church were common. But before the end of this reign the King restored to the abbey of St. Augustine's "the borough of Fordwich, which the sheriff holds, and all the lands which the late abbot from goodnature or fear or greedy motives, had given away to others, or allowed them to take*." "Breve Regis Willielmi pro terris monasterii St. Augustini Cant. alienatis recuperandis."

* Extracted in Somn. Gav. 191.

And at some time or other before his death he restored at once all the lands held by the Church in Saxon times, by a charter directing the sheriffs of counties to be summoned, and ordered to restore the possessions of the abbeys and bishoprics, and all the demesne lands which have in any way been separated from the domain of the Church[e].

Of course, though the law remained unchanged, it was often broken through by the foreign nobles, who had stepped into the place of the thanes. "It must have been easy to find reasons, which a Norman court would consider good enough for the ejectment of an Englishman." But

[e] "Charta Willielmi Regis I^mi de restitutione ablatorum in Episcopatibus et Abbatiis totius Angliæ.

"W. Dei Gratiâ Rex Anglorum Lanfranco Archiepiscopo Cantuar. &c. Suisque aliis proceribus regni Angliæ salutem.

"Summonete Vicecomites meos ex meo præcepto, et ex parte mea eis dicite, ut reddant Episcopatibus meis, et Abbatiis totum Dominium, omnesque dominicas terras quas de Dominio Episcopatuum meorum et Abbatiarum, Episcopi mei et Abbates eis vel lenitate, vel timore, vel cupiditate dederunt, vel habere consenserunt, vel ipsi violentiâ suâ inde abstraxerunt, et quod hactenus injustè possederunt de Dominio ecclesiârum mearum. Et nisi reddiderint, sicut eos ex parte mea summonebitis, vos ipsos velint nolint constringite reddere. Quod si quilibet alius, vel aliquis vestrum quibus hanc justitiam imposui, ejusdem querelæ fuerit, reddat similiter quod de Dominio Episcopatuum vel Abbatiarum mearum habuit, ne propter illud quod inde aliquis vestrum habebit minus exerceat super meos Vicecomites vel alios quicunque teneant dominium ecclesiarum mearum quod præcipio."—(*Somner, Gav., App.* 191; *Rymer, Fœd.*, i. 3.)

after all the rebellions and confiscation, and all the law-suits and appeals to force in order to get a title to land before the Domesday commissioners arrived, it seems that far the larger part of the second class of owners, the gentry, belonged to the old English families.

It was said that the lesser thanes were called Drengs. Their tenure was allodial, the land free and in the power of the owner to dispose of by gift or sale, but subject to the constant and common land-tax (hidage), and in Kent subject also to reliefs, and to fines for certain offences, payable to the king *.

* Ellis, Introd. to Domesd. i. xvii.

It has been said by some writers that "drengage" did not exist in the south of England at all. What is meant by this is, that a peculiar tenure, by free services of providing couriers and horses, was not known in the south, though common in the northern and eastern counties, and known by the same name as the free tenure †.

† Red Book of the Exch.; Nicholson and Brown. Hist. Westmoreland, i. 21.

But the entries in Domesday Book shew that it was common in Kent. In the Survey of Canterbury several mentions are made of *Allodiarii* and burgesses holding lands in *allodio, which even now pay no socage quit-rents, and have not ever been treated as gavelkind.*

When the lands of the Church were feudalized, some of the Kentish ecclesiastics gained by petition the right to hold in francalmoigne as before. The question then naturally arose, what was to be the tenure of the drengs on their estate. The prior holding in francalmoigne owed no military service, and wanted no military followers. It was therefore granted (as will be seen from the record following in the text) that the drengs might retain their old tenure on the estates of the monastery of Christchurch in Kent [f].

[f] As comparatively little has been written about the tenure, it may be worth while to collect a few notices of it into one place. It continued,

This was the case for several reigns; nor did the tenure by drengage cease to be of importance till late in the reign of Edward III.

The priors of Christchurch had long been independent of the Archbishop of Canterbury, and had as much authority on their own manors as could be held by any subject. By a charter of Edward the Confessor they had full power over the thanes, *scil.* the drengs, of whom we have been speaking; and this was confirmed to them by William I., and afterwards by Henry I., in two charters

for the most part, in the north, but charters of Henry I. to the Abbot of St. Augustine's mention it in Kent.

The Great Roll, 18 Hen. II., mentions aids paid by the drengs of Northumberland. In the Close Roll 7 John 2, occurs a precept to seize all the "drengages and theinages and serjanties," alienated by the Crown since the coronation (in Lancashire). Henry III. granted to Hildred of Carliale the drengs' lands held of the Crown in Cumberland. (Pasch. 11 Joh. 9.) It was declared to be a tenure *in capite* in the reign of Henry III., (*Abbrev. Rot. Orig.*, 11 Joh.) A notice of a trial concerning lands of this tenure is given in Madox, Exch., 333, 487, 659, and notes of tallages, aids, and scutages paid by the tenants to John and Richard I., (ibid., 714).

In 6 Edw. I., North. 7, (*Abbrev. Rot. Orig.*,) the king declared that the service was certain and *in capite*, and different from knight-service. It existed in Tyndale A.D. 1292, in Cumberland till A.D. 1305, and is mentioned in the Roll of Parliament, Trin. 21 Edw. III.; Ebor. 191; Co. litt., 5 b.; Madox, Exch., *pass.*; Ellis' Introd. to Domesday.

One or two more notices must suffice. From Dugdale we learn that the drengs must have been very like the tenants in petty serjeanty of later times, e.g. "In Cukney manebat quidam homo qui vocabatur 'Gamilbere' et fuit verus *Dreng* ante Conquestum. Tenuit ii. carucatas terræ de domino rege in capite, pro tali servicio, de ferrando palfridum domini regis, &c., quotiescunque ad manerium suum de *Mansfield* venerit."—(*Baron. Angl.*, 118 a.; *Monast. Angl.*, ii. 598.)

"In *Newton* tempore Regis Edwardi fuerunt v. hidæ. Modo sunt ibi vi. *Drengs*."—(*Domesday Book, Derby; Gale, Consuetudines*, 773.)

In Co. litt. 5 b. they are called "*Dreuchs*, free tenants of a manor," but Coke afterwards, in 4 Inst., returned to the more common form of the word. (See Blount's Glossary.)

in Latin and English still extant: "And authority over all the thanes, as I to them have granted *."

When the division of the revenues was confirmed by Archbishop Lanfranc, it was complained by the monks that he took all the barons and knights, and left them only rustics and yeomen †.

But the monks also retained these thanes or drengs as tenants, besides their yeomen and cottagers.

As the monks were to retain their old tenure of francalmoigne, it was unnecessary for them under the new *régime* to have any military tenants.

A record of all the proceedings in the case has been preserved at Canterbury in the archives, from which Somner and Spelman took their copies, and as it is full of instruction as to the old Kentish tenures, parts of it are extracted here. It is a letter from the monks to Henry II. After enlarging upon the antiquity and the venerable character of the monastery of Christchurch, the sub-prior and monks complained to the King that the Archbishop had recently attempted to usurp seignorial rights over their lands, which as appears from this document, as well as from a multitude of other records, were held immediately in francalmoigne of the Crown.

"To their most excellent lord, Henry, by the grace of God King of the English, G. the sub-prior and the monastery of Christ's Church in Canterbury ‡. . . .

* Dugd. Monast. i. 'Canterbury;' Somner, Gav. App.

† Tanner, Notitia Monastica, pref.; Gervase of Canterb. Chron.; Somner, Gav. 123.

‡ "Excell. D^no. Henrico D. G. Anglorum regi G. subprior et conventus Eccl^ie Christi Cantuar. . . .

"Flebilis et ultra modum afflictus, &c., &c.

"Qui hanc novitatem non admiretur, quod dominus Archiepiscopus dicit nos debere de eo terras et possessiones nostras tenere? cum jam per quingentos annos et eo amplius, à tempore scilicet magni Theodori, qui terras partitus est, et utrique parti suam portionem assignavit, Conventus

"Who would not marvel at the lord Archbishop's claim that we ought to hold our lands and possessions of him? Since it is now five hundred years and more (*scil.* from the time of the great Theodorus, who divided the lands and assigned to either party its share), that the monastery has possessed its portion in peace, and administered it freely, which is also fully attested by the charters of kings and pontiffs, from the tenor of which it is clear that until this unhappy time the archbishop had no more right or lordship in the lands of the monks, than they in the land of the archbishop. And that no one may doubt this, a charter of the king St. Edward, and one of Anselm the archbishop, and many others from kings and pontiffs are produced by us. And as to the assertion that it was Lanfranc who divided the lands, the truth is, that when the Normans after the Conquest had occupied the lands of all the churches, King William at the instance of Lanfranc gave them up, and Lanfranc restored to each church what it had possessed before, keeping for himself what had belonged to his predecessors. But that the division was not first made in his time is witnessed by deeds of indenture made before the time of St. Dunstan between the archbishops and the monks concerning exchanges of many different lands; moreover this is attested by some most ancient records, which in the English tongue they call 'land-books,' or title-deeds of land. And be-

in pace possederit portionem suam, et liberè administraverit, quod et chartæ Regum et Pontificum plenius attestantur, ex quarum tenore perspicuum videre est, quod usque ad hæc infælicitatis tempora Archiepiscopus nihil juris vel dominationis plus habebat in terris Monachorum, quam Monachi in terra Archiepiscopi. Et ne super hoc quisquam dubitet proferantur in medium charta S. Ædwardi Regis et Sancti Anselmi Archiepiscopi, et aliæ multæ Regum et Pontificum. Quod autem dicitur Lanfrancum dividisse terras, id est, quod cum Normanni captâ Angliâ omnium ecclesiarum terras occupâssent, Rex Willielmus ad instantiam Lanfranci, eas resignavit. Lanfrancum verò singulis ecclesiis reddidit quod antea possederant, sibi autem quod antecessorum fuerat suorum retinuit. Quod autem tempore Lanfranci non sit facta terræ divisio, testantur chirographa ante tempora beati Dunstani facta inter Archiepiscopos et monachos de concambiis terrarum multarum; sed et hoc attestantur scripta vetustissima quæ linguâ Anglorum *Land-bokes*, id est,

cause in the time of King William there were not yet any knights in England, but only 'threngs,' the king ordered that they should be turned into knights, for the defence of the realm.

"So Lanfranc turned his threngs into knights; but the monks did not, but out of their portion gave to the archbishop two hundred pounds' worth of land, that he might defend their land with his knights, and also manage all their business at the Court of Rome at his expense. Wherefore up to this time on all the lands of the monks there is not a single knight, but only on those of the archbishop. For all which causes we marvel greatly both that he says such things, and that you give countenance to him in invading our property and lands by your authority and by your servants in your name, when the lands are nothing to him, but our tenure after God is of you in chief, even as his; which is manifest, because when an archbishop dies his lands are forthwith taken by the Crown, but it has never in all ages been heard that our lands were so taken at any time. Wherefore," &c.

The monks won their cause, and were acknowledged by the archbishops in future to be independent tenants of the king; and the record just cited was preserved by them with the utmost care. We are told that in the first page of the MS. is written in Latin in an old handwriting,

terrarum libros vocant. Quia vero non erant adhuc tempore Regis Willielmi milites in Angliâ sed *Threnges*, præcepit Rex ut de eis milites fierent ad terram defendendam. Fecit autem Lanfrancus *Threngos* suos milites: Monachi vero non fecerunt, sed de portione suâ ducentas libratas terræ dederunt Archiepiscopo, ut per milites suos terras eorum defenderet, et ut omnia negotia eorum apud Curiam Romanam suis expensis expediret. Unde adhuc in totâ terrâ Monachorum nullus miles est, sed in terrâ Archiepiscopi. Terram autem ducentarum librarum adhuc habent Archipiescopi: pro quibus omnibus valdè miramur quod vel talia dicit, vel quod assensum ei præbetis, quod vestrâ auctoritate et nomine vestro per ministros vestros res et possessiones nostras invadit, cum nihil ad eum spectent, sed nos teneamus post Deum in capite de vobis, sicut et ipse; quod manifestum est, decedentibus Archiepiscopis, quia terræ eorum statim confiscantur, a seculo autem inauditum est, quod possessiones nostræ confiscatæ fuerint aliquo tempore. Quapropter," &c.—(*Somner, Gav., App.* xxi.; *and Spelman, Gloss., tit.* '*Dreng.*')

"This book must be preserved with great care, for though it seem of little worth, yet it is worth much, and is an exceedingly precious book to the monks of Christchurch*."

* Somn. Gav. 123.

By this record we learn that the monks of Christchurch were immediate tenants of the Crown from very early times. Lanfranc renewed the arrangement, which was often confirmed in later reigns. This may be seen in the pleadings on *Quo Warranto* concerning the Christchurch estates[h].

The charter of Edward the Confessor on which the monks placed so much reliance is extant still: it is a formal confirmation of all the gifts in francalmoigne made before the Conquest to the monks of Canterbury. The names of the manors are set out in a schedule[i].

Perhaps the most important part of the whole record is the paragraph about the drengs, or threngs. When the Archbishop, the Bishop of Rochester, and the Abbot of St. Augustine's became spiritual barons by military service after the year 1070, the monks wished to keep their francalmoigne, and therefore gained leave to keep their "lesser thanes" for tenants, without their being turned

[h] *Placita de Quo Warranto*, Edw. I. and Edw. II., pp. 325, 367.

[i] It is copied in Dugd. *Monast.* i. 109, and the *Codex Diplomaticus*. The original is in the British Museum, Cotton MSS. Claud. A. 3, fol. 5.

The names of the estates mentioned in the schedule, or particulars to the grant and confirmation, are for the most part legible. Some blanks have been made by decay of the MS.

The estates (which will be described in another chapter at greater length) were the manors of Sandwich, Eastry, Thanet, Adisham, ... Chertham, ... Godmersham, Welles (Westwell), East Chart, Chart, Berwick, Werehorne, Apledore, Mepham, Cooling, Freningham, Holingbourne, (East) Farleigh, ... (East) Peckham (in Kent).

One of the other charters referred to in the text as having been granted in ancient times to the monks of Christchurch is "The Privilege of King Ethelred," dated A.D. 1006, extracted in the *Monasticon*, title 'Canterbury Cathedral,' vol. i. p. 97.

into knights, which would have been unnecessary and inconsistent with a *purely* spiritual tenure.

We see that the monks paid a very high price for their privilege, *scil.* "200 librates or pounds'-worth of land, in lieu of all military services."

Opinions have been somewhat divided as to the extent of a librate of land.

Blount thought that it might be a measure of 240 acres, arguing from the assumption that a pennyworth or denariata was an acre* [k]. There are, however, good reasons for supposing that the librate varied according to the quality of the land from twenty to forty acres. We cannot attempt to define its extent with precision †.

* Gloss.

† Co. litt., 5 b.

It is probable that the tenure of drengage on the estates of the priory of Christchurch, was not retained nearly as late as in the North of England.

At any rate in the "Book of Christchurch," in Lambarde's collection of Kentish records, cited more fully below, no such tenants are mentioned. In their place appear *milites* or knights holding of the priory by fealty and military service; and this is also the case in the *Testa de Nevil*, or roll of knights'-fees compiled about the beginning of the reign of Edward II., and in the "Book of Aid," 20 Edw. III., or record of all the ancient military lands in Kent. But whether the lands of the drengs were counted in later times among the purely military fees, or among

[k] Hearne, "Black Book of the Exchequer," 31. "In the thirteenth century sixpence per acre seems to have been about the average value for arable land, though meadow was at double or treble that sum. We are lost in amazement at the constant recurrence (in Domesday Book) of two or three carucates in demesne, with other lands occupied by ten or a dozen *villani*, valued altogether at 40s. as the return of a manor which would now yield a competent income to a gentleman."—(*Hallam, Middle Ages*, vol. iii. p. 363.)

those held in petty serjeanty, or any other variety of socage, it is clear that they have never been included in the gavelkind land of the county. That this was always known to be a true distinction is shewn, *inter alia*, by the fact, cited above from Somner, that the houses in Canterbury of this tenure always remained free of any socage quit-rents.

It may be useful here to give a brief summary of the law relating to gavelkind proper, as it has descended to our own time.

Tenure by socage was changed in almost all its incidents throughout England except in the county of Kent.

The severity of the feudal system pressed in some respects as hard on tenants in socage as on those who held in chivalry. They became liable to escheat, forfeiture, attaint, aids, reliefs, and fines on alienation, and the ancient liberty of testamentary disposition was taken away.

But the men of those parts which had first peaceably submitted to the Conqueror, had been confirmed in all their ancient laws and liberties. London kept its customs, as afterwards did most of the ancient boroughs[l]. Kent was firmly attached to the Conqueror by the treaty, which he never broke, that the law of Kent should not be changed.

"Thus," says a recent writer, "the old tradition of a separate nationality and little differences of dialect and customs were still stronger in the very neighbourhood of the capital, than the remembrance of ancient union [m]."

[l] See the Domesday Survey of Hereford: "Rex habet Hereford in dominio, et Anglici Manentes ibi habent suas priores consuetudines." In the same way the men of the "English borough of Nottingham" retained their custom of descent to the youngest son.

[m] Pearson, c. 22.

We will now examine somewhat more minutely the incidents of gavelkind in Kent after the Conquest. It was the highest species of ancient socage, and the most important.

As to escheat and forfeiture.

"Gavelkind lands," says Blackstone, "which seems to be the old Saxon tenure, were liable to forfeiture for treason, 17 Edw. IV., st. i. c. 16, but in no case to escheat for felony*." This is going farther than is claimed by the Customs of Kent, which are only the remains of the old common law; that law, as we have seen already, recognised escheat for felony in several different cases: if the gavelkind tenant when indicted for felony took sanctuary, were outlawed, or fled abroad, his *lord* took the escheat; if the felon suffered the judgment of the law, the *heir* took by descent with no escheat or corruption of blood. This is not only the old, but the modern Kentish law†[n].

* Steph. Bl. i. 440.

† Robins. bk. ii. c. 4; Dyer, 310; Bract. iv. 276.

As to the Kentish custom to devise.

Although the power to devise land by custom is now of no value, it was long a most important question in Kent, whether all tenants of gavelkind might devise such land by force of a general custom.

It seems that this custom was claimed to extend to parol devises, and therefore the importance of the question was not quite taken away by 32 and 34 35 Hen. VIII., or by 12 Car. II. c. 24; it ceased when the Statute of Frauds enacted, "that all devises or bequests of any lands or tenements deviseable either by force of the statute of wills, or by this statute, or by force of the *Custom of Kent*, &c., shall be in writing, and signed[o]," &c., &c.

[n] Chapman's Case, Ro. Rep., 368.

[o] For the arguments for and against the custom, see Somner on Gav.,

On a consideration of the whole question, it appears that such a custom did not properly exist, as far as we can now judge. It was, however, allowed at last in the much litigated case of *Launder* v. *Brooks*, Cro. Car., 561, and was therefore noticed to be at that time law in the Statute of Frauds just cited.

The words of the Kentish Custumal, on which reliance was placed by those who asserted the existence of the custom, are merely these: "And that they may their lands and tenements give and sell ('give *or* sell,' *varia lectio*) without license asked of their lords, saving to the lords their rents and services due out of the same tenements[p]."

The custom is taken strictly, and it is hard to establish by these words a custom to devise. One of the greatest privileges enjoyed by the gavelkind tenants was free alienation *inter vivos* without licence, which was denied to the inferior husbandmen, as is shewn by the *Liber Ecclesiæ Christi* quoted below. The mention of the rents and services in this passage, and in that relating to alienation by an infant (where the same phrases are employed) go far to shew that nothing but alienation *inter vivos* was intended.

pp. 151—172, and a tract on the subject there reprinted by him. These arguments are also set out in Robins. on Gav., bk. ii. c. 5. There are, however, one or two points not quite cleared up in either of these places.

[p] "Et quilz pusent lour terres et tenementz doner et vender (doner ou vender) sanz conge demander a lour seignerages: sauves a seignerages les rentz e les services dues des mesmes le tenementz."

It should be remembered that the licence to infants to aliene by feoffment is expressed in the same way: "Doner et vendre (doner ou vendre) a lour volunte sauves les services au lour seignerages com il est devant dit;" yet it was never contended that infants in gavelkind might devise at fifteen by the custom.

Before the Conquest there was free liberty of devising lands, if the right heriot were bequeathed to the lord, who otherwise, it seems, might upset the will. It was argued from this that the liberty must have remained on gavelkind land, where all the ancient privileges were allowed by the Conqueror to remain. On the other hand, we know that several alterations were made in the tenure of gavelkind, as well as in other socage tenures, by the Norman kings, and that there is no proof that the power of devise, if it existed, was not taken from the tenants. At any rate they never claimed it afterwards, even in the solemn enumeration of their privileges known to us as the "Kentish Custumal," nor is it mentioned in any of the chartularies which profess to record the privileges of all classes of tenants in Kent respectively.

It must not however be forgotten that, if the Custumal omits any mention of devise, yet it does not specially provide that all gavelkind land shall in every case be divided *inter masculos;* on the contrary, the rules of the customary partition are expressly made for cases where land of this nature had come down by inheritance to the father, and do not mention his own acquisitions or purchases [q]. Over the family estate (*hereditas aviatica*) he could not by the old common law have any power of free devise.

There were *special* customs in Canterbury, Minster manor in Thanet, "the Monks' borough" in Seasalter, &c., to devise lands according to the custom of the

[q] "Si ascun tenant en gavylekende murt et seit *inherite* de terres e de tenementz, que touz ses fils partent cel *heritage* per ouele porcioun."—(*Kentish Custumal.*)

The custom of the ancient borough of Bristol illustrates this; it was not lawful to devise any lands or tenements which had descended to the burgess by inheritance. (Lidiard's Case; *Calend. Genealog.;* Esch. Roll, 9 Edw. I. 80.)

borough, or of the manor, which would not have been needed if there were a *general* custom throughout the county[r]. This, however, is not a conclusive argument, though generally put forward as such, because there might possibly have been an ancient custom of devising gavelkind not affecting a special custom of devising military lands, or some inferior lands of husbandmen, or copyholds.

Robinson notices "that most of the ancient wills of *gavelkind* lands in Kent (collected by Somner, 152, 153), mention feoffees to uses, particularly the will of Fineux, chief justice of C. B., and Butler, who had there been any custom to devise could not have been ignorant of it."

Among them was the will of Thomas Bourne, of Tenterden, May 3, 1538, expressly noticing the "Act to avoid Uses of Wills," and bequeathing money to his sons that they might consent to carry out the provisions of his will respecting gavelkind lands in Hawkhurst, and a house and shop in Tenterden, of the same tenure.

But the most important case was that of Sanders, who in 9 James I. devised his lands at Maidstone to another,

[r] In Canterbury both the citizens *and their wives, notwithstanding coverture*, have a customary power to devise freeholds. (Hast. xii. 612.)

"Consuetudo civitatis Cantuar. talis est quod quilibet de civitate prædictâ potest legare messuagia sua quæ habet in eâdem civitate adeo bene sicut et alia bona et catalla sua."—(*Itin. Kanc.* 55 *Hen. III.*, v. 85.)

There is no special restriction of this liberty to tenants of gavelkind any more than in the following instances: "In 55 Hen. III., *Itin. Kanc.* 18, it is pleaded that the tenements within the borough of Minster (in Thanet) were deviseable according to the custom of the manor."—(*Rob.* ii. c. 5, *Wilson's note.*) In *Assis. in Com. Kanc.* 4 Ric. II., in an assize brought against one Bolle and his wife by one Croke and his wife, it was pleaded that *all* lands and tenements in the Monks' Borough in Seasalter belonging to the Prior of Christchurch, had been from time whereof, &c., deviseable by the tenants and their wives, notwithstanding coverture.

"and afterwards the will was avoided for a third part by reason of a tenure *in capite* of a small part of the land (ancient knight-service), and the third part of all the residue of the lands, being gavelkind, did escheat to the king for want of heirs. Whereby it is evident that gavelkind lands in Kent were never deviseable by custom; and so it was determined by the court, Pasch. 37 Eliz. C. B. in *Halton* v. *Starthop*, upon evidence to a jury of Kent, and it was then said that it had been so resolved before *[a]." * Somn. 154.

Besides this no trace has been found "in the early records of Kentish iters of any one title made under a devise by the general custom of the county, or indeed any footsteps of such a custom [b]."

Notwithstanding all this, it came to be at length admitted for law that such a custom existed. The chief reasons given for it were as follows.

The customs of Kent are part of the old common law, "and lands during the Saxon times were deviseable." The wills of Athelstane Atheling †, A.D. 1015, and of a thane named Burhtric of Mepham ‡ were cited at length, but it is difficult to see what they could have to do with *gavelkind.* † Somn. 198. ‡ Lamb. Peramb. 492.

The court produced Lambarde's copy of the latter will as a precedent for the custom in *Launder* v. *Brooks*, Cro. Car. 561, and its production appears to have materially assisted the verdict, which after several trials on the will of Mr. Brooks, was given in favour of the custom. The contents of this ancient will are briefly these: after a bequest to the lord of jewels, horses, hawks, hounds, &c., as a heriot to the lord *and lady* "that this will may stand," and an enumeration of witnesses, Burhtric *and his wife* devised to the monks of Rochester two sulings at Denton,

[a] 3 *Rep.* 35 a; 2 *Sid.* 154. [b] Wilson, note to Rob. ii. c. 5.

and two in Langfield, with the manors of Falkham, Wateringbury, Snodland, &c.; and to the monks of Christchurch, Canterbury, the manor of Mepham. He left also certain rent-charges in Wateringbury, Haselholt, Birling, &c., to the monks of Rochester, with certain other legacies and bequests; and he devised 'Hartsham' to two of his kinsmen, the *inland* to one and the *outland* to the other, i.e. the socage tenements.

Most of these lands are still held in francalmoigne by the deans and chapters of Rochester and Canterbury.

This curious will[u] can hardly be relied upon as proving that gavelkind tenants had a customary power of devise. At most it shews that a thane or noble, as Burhtric was *, might leave his manors and demesnes, and apparently the seignory of the lands in the possession of his socage tenants, by his will, after observing certain rules and ceremonies.

* Lamb. 499.

No distinction was drawn by the judges between the free 'booklands' of a noble, and the inferior holding of a rustic; neither did they notice the old distinction in the Kentish Custumal between inherited and purchased lands of the nature of gavelkind. The decision, however, overset the judgment in *Halton* v. *Starthop* †, and established the custom for the future. It was afterwards several times confirmed[x].

† Somn. 155.

[u] For more minute particulars concerning this will, see the whole extracted and translated, Lamb., Peramb., 492, 499; *Registrum Roffense*, 26, 110; Hickes' *Thesaurus;* MS. Report of *Brown and Brooks* and *Launder and Brooks*, cited by Robinson; Hasted, iii. 358, 472; ii. 369, 425, 445; v. 106; cf. Somner, Gav., 85, 198.

[x] *Arthur* v. *Bockenham*, Fitz-Gib. 233; *Bunker* v. *Coke*, Salk. 237.

A doubt arose whether this custom allowed a devise of lands which the devisor did not hold at the time of making his will, and it was decided that the custom applied only to *tenementa sua*, i.e. "before he can dispose of them, they must be *sua*, and if not *sua* at the time of the devise they are out of the custom." (Holt, Ch. J., cited by Robinson in

And in another way this decision in *Launder* v. *Brooks* was very important, as recognising that the proper period for determining the incidents of gavelkind, or ancient socage in Kent, is that of the Norman Conquest, or earlier[y].

As to guardianship in gavelkind.

This guardianship was very similar to that of ordinary socage tenants, though there are some peculiarities concerning it which seem to require a separate notice.

The general rules of guardianship in gavelkind were thus briefly summed up by Lambarde:—

"If the child be under the age of fifteen years, the next cousin to whom the inheritance cannot descend shall (by appointment of the lord, if divers be in equal degree of kindred) have the education and order of his body and lands until such time as he shall attain unto that age; even as the guardian in socage at the common law shall keep his until the ward come to fourteen.

"And in all other things also this customary guardian is to be charged and to have allowance in such sort and no other than as the guardian in socage at the common law; save only that he is chargeable to the heir in account for his receipts, and subject also to the distress of the lord for the same cause; yet do I not hear that the lords take upon them at this day to commit the custody of these infants, but that they leave it altogether to the order of the common law*."

"So that upon the whole matter the odds consist only in this, that guardian in socage at common law shall keep the land till the infant be fourteen years of age, and guardian by the custom till he be fully fifteen†."

* Peramb. 563.

† Ibid. 564.

(*a.*) "*The next cousin.*"

In gavelkind, as in other species of socage, no military

Arthur v. *Bockenham.*) For the present law, see 7 Will. IV. and 1 Vict. c. xxvi. § 24.

[y] *Wiseman* v. *Cotton*, 1 Sid. 77. 135; *Lushington* v. *Llandaff*, 2 New Rep., 491.

services being properly due from the tenant, the lord of the fee had no claim to take the profits in order to provide a substitute to perform personal services of chivalry.

It was, however, claimed on behalf of the Archbishop of Canterbury in 6 Edw. II. *, that "after the death of a gavelkind tenant leaving an infant heir, there is a custom to deliver his lands and tenements into the hands of the then archbishop, who is entitled to the guardianship, and may assign it at his pleasure to another by the custom of Kent †." It was found both in this case and in another, 21 Edw. I. ‡, that by the custom of gavelkind "the archbishop might commit to whom he would the custody of the body and lands of his tenant, being an infant." But an entry in the same roll § shews that no such custom rightly existed, though the archbishops had usurped by force the guardianship of certain gavelkind lands, "and the jury expressly found that no such wardship ought to go to any but the next relations (*proximis parentibus*) to whom the land cannot descend."

* Rot. 7, It. Kanc.

† Vide Rob. bk. ii. c. 5.

‡ Berwicke Roll, 35, It. Kanc.

§ Rot. 72.

The priors of Christchurch appear to have claimed the same right in some at least of their manors, for we find an entry on the *Quo Warranto* rolls denying such a claim in the manor of Orpington [z].

[z] "In Orpinton non habet Prior wardam neque maritagium de gavelkynde."—(*Pleas of Quo Warr.*, 7 Edw. I., p. 367. See the Hundred Rolls for Kent, 3 Edw. I., 201, 202, 204, 207, 208, &c.)

The Custumal is clear upon the point:

"Et si le heir ou les heirs seyt ou seyent dedeins le age de xv. ans, seit la nouriture de eux baille per le seigneur al plus procheyn del sank a gui heritage ne peut descendre, issi que le seigneur pur le bail rien ne prend. Et qu'il ne seit marie per le seigneur mes per sa volunte demeine et per le conseil de ses amys s'il veut."

Compare the message of Henry III. to the sheriff of Kent in the Close Rolls:

"Certum est quod terrarum quæ tenentur in socagio vel gavelkind

The claim that such guardianships were assignable, is of course contrary to the modern doctrine that the guardian exercises only "a personal trust for the infant's benefit."

The only customary power given to the lord was that of selecting a guardian among the kinsmen of equal degree; but even this was rarely exercised, the lord being accountable for the default of any guardian appointed by him.

(*b.*) "*Of his lands.*"

The title to guardianship cannot arise, unless the infant is seised of lands or hereditaments lying in tenure of socage*. The guardian cannot present to a benefice in the right of the gavelkind heir, "because he cannot be accountable therefor, for he can make no benefit thereof†." It has been said that he may present in the name of the infant, but it is now settled that an infant of any age may legally present[a].

* Co. litt. 88 b and note.

† Co. litt. 89 a.

This guardianship is confined to lands, &c., where the infant is in by descent; though a contrary opinion has been supported‡.

‡ Co. litt. 87 b, n., 88 b, n.; Vaughan, 186.

(*c.*) "*Chargeable to the heir in account.*"

The action of account would not lie during the nonage of the infant, but in equity§ the infant, by his next friend,

§ Wilson's n. to Rob. ii. c. 3.

nulla pertinet ad dominos custodia, sed solummodo ad parentes propinquiores ex illâ parte qui ad successionem hereditatis aspirare non possunt."—(*Rot. Claus.*, 37 Hen. III., 19.)

"If the inheritance may descend to the relations of both the paternal and maternal lines with a preference only to the former, it seems there cannot be a customary guardian unless the next of blood be a lineal ancestor or of the half-blood."—(*Wilson's Note to Rob.* Compare now Co. litt., 88 b and note, and the New Inheritance Act, 3 and 4 Will. IV., c. 106.)

[a] Hargrave's note to Co. litt., 89 a. He mentions a presentation of an infant one year old being legally allowed. As to whether it would be allowed in equity, 2 Eq. Cas. Abr. Infant., and the same note.

might sue for an account before the expiration of that period *.

* 2 Vern. 342.

(*d.*) "*Subject to the distress of the lord.*"

† Fitz. Avowry, 220.

It was found in 18 Edw. II. † that the usage and custom of Kent was for the lord, on the heir attaining fifteen years, to cause the land to be delivered to him, and to distrain the guardian for an account [b].

As to alienation by an infant in gavelkind.

Lambarde named three things requisite, in his opinion, for an alienation of this kind: "(*a.*) That he be an heir and not a purchaser of the land; (*b.*) That he have recompense for it; (*c.*) That he do it with livery of seisin by his own hand and not by warrant of attorney, nor by any other manner of assurance ‡."

‡ Peramb., 565.

(*a.*) As to the first point, Lambarde's opinion is supported by several ancient authorities, by the language of the Kentish Custumal, and by the modern authority of Mr. Wilson, editor of Robinson's "Gavelkind" (third edit.), who considers the point at least doubtful, the guardianship of the infants being confined to those in by descent, and the custom being that *such heirs* at fifteen may aliene by feoffment. Serjeant Hales, "who was a Kentish man," was of the same opinion.

On the other hand, Robinson himself took a wider view, extending the privilege to purchased as well as inherited lands. In support of this he cited several very general expressions from records of the reigns of Henry III., Edward I., Edward III., and Richard II.; to which it is objected that in most of these either we know, or we may justly infer, that the infants mentioned in them took *by descent.*

It is, however, suggested as a possible solution of the

[b] The case is given at greater length by Robinson, bk. ii. c. 3.

difficulty, that before the passing of *Quia Emptores*, 18 Edw. I., there was no alienation permitted of land inherited, though "purchases and acquisitions" might be freely aliened, if enough were retained for the necessities of the family *. In the course of time alienation of one-fourth was allowed †, and it seems of a moiety by *Magna Charta* (i.e. sufficient had to be retained to satisfy the dues of the chief lord). There would be no special privilege required in Kent for the alienation of *purchased* lands on attaining full age (fifteen years in all gavelkind lands); but a liberty for *heirs* to aliene their inherited lands at that age would be, before 18 Edw. I., an important and peculiar privilege, which would naturally be recorded in any enumeration of the ancient rights of gavelkind men. The Custumal of Kent, found in the old collections of statutes, e.g. Tottel's edition of Magna Charta, &c., appears to be a record of such things as had been found by the whole county in ancient times; these are noticed to have been *allowed* in eyre, 21 Edw. I., in Lambarde's copy. But it is not said anywhere that they were not drawn up long before *Quia Emptores*. Nor is that copy supposed to be the oldest extant; for Somner ‡ supplies a clause omitted in it, respecting the immediate entry by the heir on the lands of a *felo de se*, from an older copy "registered in a quondam book of St. Augustine's Abbey at Canterbury," (then in the library of Sir Roger Twisden [c]). This

* Laws of Hen. I., c. 70; Glanv. vii. c. 1.

† Mirror, i. § 3.

‡ p. 170.

[c] "The Book of Evidences of St. Augustine's Abbey, containing *Consuetudines Kanciæ*," (Brit. Mus.,) Arundel MSS. 310.

There are many copies of the Custumal extant, *scil.* Lambarde's copy, printed in the "Perambulation of Kent," which has been received as legal evidence, *Launder* v. *Brooks*, Cro. Car., 562; Tottel's copy, printed in "the old Magna Charta," and other collections of statutes; an important MS. copy in the library of Lincoln's Inn; one made by Philipot

clause was omitted in the later copies, "because no other than the common law;" and for much the same reason we may suppose that alienation of purchased land at full age was not discussed in the Custumal; though, as we have said, it was highly necessary to record the special privilege before 18 Edw. I., of free alienation by *heirs*.

(*b.*) "*That he have recompense for it.*" It was supposed by Robinson that the custom permitted alienation of this kind without valuable consideration, though this was not allowed by any of the older writers. He relied on the various reading "*doner* ou *vender*," but the other and more usual reading, "*doner* et *vender*" (*dare*, *vendere*) is believed to be correct.

"And," says Lambarde, "these words in the copulative, for so they be in deed, though the printed book (Tottel's edition) have them disjunctively, do of necessity imply a recompense*." And in the second place Robinson noticed as evidence of the correctness of his inference, that the consideration of such feoffments "is never set out, as probably it would be, were it necessary." But his later editors have shewn that the inference was wrong, and as to the last argument, that the consideration would probably not be set out, if the question were not traversed by the plaintiff, Mr. Wilson added that the usual practice is to add to the memorandum of livery of seisin an attestation that the consideration money was paid to the infant, instead of endorsing a receipt for it.

* Peramb., 566.

And the weight of modern decisions is decidedly op-

in the Lansdown library, Lansd. MSS., 311; "one in MS. is in the King's Remembrancer's office, and several in the Cotton library, and among the Harleian MSS. in the British Museum."—*Hasted*, i. 317. See also the short summary of the incidents of gavelkind in the *Stat. de Prærogativâ Regis*, 17 Edw. II.

posed to the idea that the custom permits the infant to aliene without recompense.

(*c.*) "*With livery of seisin by his own hand.*" This is still required, feoffments by infants under a custom being excepted from the Act of 8 and 9 Vict., c. 106, and other statutes affecting conveyances of real property. It is laid down that the custom shall be taken strictly, partly perhaps to preserve the traditional ceremony and notoriety required for a sale of land in Kent before the Conquest, partly to ensure that the youth of the vendor shall not be abused in a secret bargain.

The custom therefore does not extend to feoffments by attorney, to warranties, or grant of a reversion expectant on an estate for life; it was conjectured by Hankford, J. in 11 Hen. IV. 33. that a lease and release, "being tantamount to a feoffment, might haply be good by the custom," but his opinion has not been adopted by other interpreters of the law. Coke expressly lays down that the infant in gavelkind "cannot by the custom make a will at fifteen to pass away his land, to make a lease and release, which amounteth to a feoffment[d] *". * 21 Edw. IV. 24.

It is a more difficult question whether the infant out of the possession and seisin of the land may *release* his right at fifteen.

The opinion of Hankford, J. was against such a power, but the case does not support his opinion clearly †, and Robinson produced a great many early instances in support of its existence ‡, and considered that "an infant of fifteen may certainly release the fee to his guardian holding over, or to tenant for life, or a mere right to one † 11 Hen. IV. 33. ‡ Bk. ii. c. 3.

[d] Complete Copyh., 33, §. 3. As to the supposed power of devise at fifteen, see Year-book, 3 Hen. VI. 5, and *contrà*, 21 Edw. IV. 24, and the section on devise of gavelkind lands in this chapter.

having a defeasible estate and seisin already of the land; yet it is a question of a very different consideration whether he may grant a present estate in the land by any other means than that of livery; none of the instances amount to this."

The custom does not extend to any conveyances founded upon the statute of Uses, "for what things soever have their beginning since the memory of man custom maintains not *," and equity has not sought to extend the somewhat dangerous privilege of alienation before attaining years of discretion.

* Co. Copyhold, 33.

Though the custom is taken strictly, it does not follow that it must be construed literally; and therefore the greater right of the infant to aliene by feoffment in fee simple includes the lesser right of creating by feoffment an estate tail, a lease for life, or lives, or to one for life, remainder to another in tail †, "Omne majus continet in se minus [e]."

† Co. litt. 52 b.

As to Dower.

Both dower and curtesy in gavelkind retain the ancient qualities of these estates, differing from those known to ordinary socage tenants since the Conquest. The name of free-bench (*francus bancus*), now applied almost entirely to copyholds, is proper to both these estates. In the old books dower in gavelkind is called indifferently *francus bancus socmannorum*, and *dos de gavelkind* [f].

[e] Thus in copyholds where there is a custom of granting the land for life, a grant to a widow *durante viduitate* is within the custom, but not *è converso;* Co. Copyh., §. 33.

[f] "Isabel de Graveney petit dotem. Et consuetudo est in partibus illis quod uxores maritorum defunctorum habeant francum bancum de terris socmannorum et teneant nomine dotis ad vitam suam, sed si," &c.—*Is. de Graveney's Case, Bract.*, lib. iv. t. 6, c. 13.

In c. 15 this free-bench is mentioned again as "*dos de gavelkind.*"

The widow has a moiety of all the gavelkind lands and tenements (including common, rents, profits of fairs, &c.) of which her husband was seised at any time during the marriage, either in law or in deed, for her life; but her estate is, *ipso facto*, divested by a second marriage *or* unchastity. It is indeed declared by high authorities that unchastity, not followed by the birth of a child, is not enough to work a forfeit *. But Robinson produced several old authorities for the wider position †, and especially *Margaret Godfrey's case*, where the widow claimed that not only must the birth of a child be proved, but that the mother must be attainted of it, according to the immemorial custom of Kent, by the hue and cry. But the verdict found that the dower in gavelkind was forfeited merely by the unchastity, and this is fully borne out by the wording of the Stat. *De Prærogativâ Regis*, 17 Edw. II., 16.

* Lamb. 556; Co. litt. 33 b.

† Bk. ii. c. 2.

Robinson also held that if the widow leases the land and marries, the lessee would not have the emblements ‡; but this was not warranted by the case adduced, and the contrary opinion has long been established § [5].

‡ 5 Rep. 116.

§ Co. litt. 55 b.

Anciently it was held that the widow had no dower of a moiety of rents-charge newly created, arising out of gavelkind land; but it is now the law that all rents arising either out of gavelkind or borough-English lands shall follow the nature of the land, unless they are rents-service appendent to the demesnes of a manor descendible

In the Book of Christchurch, cited below, we find "Gavelkendi debent dotare de medio."

"In gavelkind mulier habebit medietatem pro dote suâ."—(*Stat. de Prær. Regis*, 17 Edw. II., §. 16.)

[5] And as to the tenants at a rack-rent holding under lease of tenant for life on other uncertain interest, see 14, 15 Vic., 25, §. 1.

at common law. Tithes impropriate, however, are not gavelkind, though they arise from land of that tenure[h].

There was an ancient usage, now practically obsolete, that the widow of a convicted and executed felon did not forfeit her customary dower of a moiety. This might be important if any new felony were created by statute, if the wife's dower were not expressly saved by the wording of the Act[i].

The widow takes a moiety of her husband's socage lands in several other parts of England besides Kent. For instance, in Urchenfield *, Herefordshire, where "Welsh gavelkind" prevails; in Norwich, where much land was held "as in gavelkind" throughout the fee of the Marshal of England, and in the honour of Richmond; and "in the town of Salop is a custom that the wife shall have a moiety of socage, but if the husband had socage and (land held in) chivalry, the wife took only a third part †," (15 Hen. III.)

* Taylor, Gavelkind, 44. 110.

† Co. litt. 33 b, note 7.

By the custom of some counties she takes half, and by the custom of some towns or boroughs she shall take the whole ‡; and in the Forest of Pember (Southampton), the usage was that the widow of a tenant *in capite* dying without issue should take the whole land for her life, but should forfeit two-thirds upon a second marriage[k]. The same custom prevailed at Hatwood, Essex[l].

‡ Litt. §. 37; F. N. B. 150.

In some other places dower was reduced to one-fourth ‖;

‖ Co. litt. 33 b.

[h] *Lushington* v. *Llandaff*, 2 New Rep. 491.

[i] "Dos post feloniam mariti peti non potest a muliere, &c., nisi in casu speciali sicut in Kanciâ."—(*Bracton*, iv. 311; *Co. litt.* 41 a; and see Wilson's note on Robinson (2), bk. ii. c. 4.)

[k] Inquis. p. Mort., 44 Hen. III., 27; Cal. Geneal., i. 33.

[l] Ejectm., 35 Hen. III., 17.

and in the honour of Hawarden, Cheshire, the custom was to give no dower at all [m].

It is a common custom in burgage tenements held in borough-English, for the widow to take the whole in dower [n].

In copyholds there are many curious varieties of free-bench, which there is no room here to discuss. But we may notice the custom of the manor of Cheltenham for the widow to take all the lands of which the husband was seised during the marriage; and another said to exist in the manor of Taunton Dean, Somerset, where "notwithstanding there are many children the wife shall take the fee; if she dies it goes to the children of her first husband, divided equally as in gavelkind, excluding any children by a second marriage [o]." It is believed that the reasonableness of this custom has not been judicially affirmed.

The custom of gavelkind being "precisely that the widow shall have a moiety [p]," the dowress cannot waive the moiety *durante viduitate*, and take a third for life *. * Co. litt. 33 b.

The strictness of the law on this point gives great value to those inquisitions *post mortem* and assignments of dower in Kent, where we find that the widow took one-third in dower, a proof that the land is not of the nature of gavelkind †. For instance, in 49 Edw. III. one-third of the manor of Buckland (Feversham hundred) was assigned in dower, as appears by the Escheat Rolls of that year. Now we know, independently of this, that the manor was † Archæol. Cantiana, v. 288.

[m] Inquis. p. Mort., 4 Edw. I., 88; Cal. Geneal. i.

[n] Co. litt. 37 b, and 111 a; F. N. B. 150; Bac. Abr. i. 531; Robins. Appendix, Wilson's note (1).

[o] *Newton* v. *Shaftoe*, 2 Keb., 158.

[p] *Davies* v. *Selby*, Cro. Elis. 825, and vide 1 Leon. 61.

never gavelkind, but the assignment of dower is additional evidence. The history of the manor is briefly this:—

The name Buckland (*quasi* Book-land) shews that it was *allodium* before the Conquest, granted to a noble by charter (land-book). At the Conquest it was given by William I. to his half-brother Odo of Bayeux, and of him a sub-tenant, Osbiorn, held it by military service.

Domesday Book tells us that in this manor were two ploughlands, *scil.* one in demesne, half a ploughland held by the tenants (paying land-tax for three yokes, or three-quarters of a ploughland), and one yoke (a quarter of a ploughland) held by the lord of the manor with his demesnes. Besides this, one yoke (a quarter of a ploughland) was held of the superior lord, Odo, by a Norman tenant. On the Bishop's disgrace the manor was granted to the family of Crevequer* in knight's service as before; and in 33 Edw. III. William de Apperfield died, holding the manor of Buckland and its demesnes, advowson, appendant, &c., of the king as of his castle of Leeds, as part of the honour or barony of Crevequer by knight-service.

* Hast. vi. 397.

In the twentieth year of the same reign, according to the Book of Aid levied in that year on the military lands of Kent, Buckland manor paid aid as one-fourth of a knight's fee. There are many other notices of the tenure of this manor by knight's service until 12 Car. 2, c. 24, and afterwards in socage *in capite*.

But Hasted† gives an account of its subsequent descent, which seems to be mistaken, or, if true, to have been very irregular. He states that the manor and advowson, as well as the gavelkind lands held of the manor, descended in equal thirds among the three sons of an owner who died intestate in the last century.

† vi. 399.

But even if he had not seen the assignment of dower

of one-third, or the entry in the "Book of Aid," mentioned above, he should have known from the records cited by him that the manor, demesnes, and advowson were not gavelkind.

As to tenancy by the curtesy.

The estate of the tenant by the curtesy of England in gavelkind lands and tenements, was called in ancient times "the man's free-bench," (*francus* or *liber bancus*)[q].

Tenant by the curtesy is entitled by the custom of Kent to one moiety and no more of all the lands and tenements of gavelkind nature of which his wife was actually seised; but his estate is forfeited by a second marriage.

It differs from the estate given to a husband by the curtesy of England chiefly in this, that the birth or failure of issue capable of inheriting the land, &c., make no difference to the widower; in either case he will take a moiety until death or another marriage.

The law as to curtesy in rents, commons, profits of fairs, tithes impropriate, &c., is similar to that of dower according to the custom of Kent[r].

[q] *Mose* v. *Peltebeam:* "Clamat terram tanquam liberum bancum suum per legem et consuetudinem Kanciæ."—(*Itin. Kanc.* 39 Hen. III. 14.)

De Bendings v. *Prior of Christchurch:* "R. de Valoignes habuit nomine franci banci medietatem illius manerii."—(*Itin. Kanc.*, 25 *Hen. III.*, extracted *infra.*)

[r] The Custumal of Kent defines the rights of the dowress in the following clause:—

"Et si nul tiel tenant in gavelkind meurt, e eit femme que survive, seit cele femme meintenant dowe de la meitie des tenementz dont son baroun morust (1.) (vestu e) seisi, per les heirs s'il seient de age ou per les seigneurs s'il ne seient pas de age: issi que ele eyt la meitie de celes terres e tenementz a tener tant com ele se tyent veuve, ou de enfanter (2.) seit atteint per le auncient usage, ceo est a scavoir, que quant ele enfante e l'enfant seit oi crier e que le Hu e le Cry seit lue, e le pais ensemble, e eyent veue de l'enfant ensi enfaunte, e de la mere, adonks

The inquisitions *post mortem* contain many details about tenancies by the curtesy of different manors and lands in the county, which afford enquirers very good evidence as to the tenure in each case. The manor and demesnes are often found to have been held entire (by the common law), but only a moiety of the socage lands appurtenant to these demesnes by the same tenant.

In enquiries of this kind it is not safe to neglect any details of the old custom; a slight clue may lead to full knowledge as to the tenure: for example, we have seen that in gavelkind lands the birth of issue was immaterial to the tenant by the curtesy, but absolutely necessary for the tenant of the same estate at common law. When therefore a jury was summoned to decide whether issue

perde son dowere enterement, et autrement nyent, tant come ele se tient veuve; dont il est dist en Kenteis,

"He that her wende (turn)
He her lend."

On this we may remark, (1.) that the customary dower is said here to be of the lands, &c. of which her husband *died seised;* but the expression is construed to mean "died, having been seised during the coverture." (Lamb., Peramb., 555.) Also, that in the most ancient copies the words are "vestu e seisi," as if the seisin must have vested in the husband to enable the widow to claim dower; but this would be against the principles of the common law, "for it lieth not with the wife to bring it to an actual seisin, as the husband may of his wife's land, which is worthy of observation." (Co. litt. 31 a.) (2.) Lambarde maintains that the birth of a child, with all the ancient formalities of hue and cry, gathering the neighbours, and convicting the mother, was necessary in order that the customary dower should be forfeited, so that the widow was safe, who lived *si non caste tamen caute.* (Lamb., 555.) But this has been shewn above to be obsolete, if it ever was the law.

As to curtesy, the Custumal provides thus: "E clament auxi, que homme que prent femme que eit heritage de gavelkind, e la femme murge avant luy, eit le baroun la meitie de celes terres e tenementz (tant come il se tient veuvers) dont ele morust seisei sans estrepement ou waste ou exile faire, le quel qu'il y eit heir entre eux ou noun; et s'il prent femme, trestout perde."

was born (and heard to cry, as evidence of having been alive) before the tenant was allowed to succeed his wife, we know that the land was not gavelkind. A case of this kind will be discussed at greater length in the chapter on knight-service (manor of Boughton Aluph).

As to commons and waste lands.

It was once held that there could be no common in gavelkind land*, though this has long ceased to the law, and the Stat. 4 Hen. VIII., c. 6, recognises the existence at that time of common coppice woods in the Weald of Kent.

* Lambarde, 567, 568; Fitz. Prescription, 52, 16 Edw. II.

This old opinion had probably some foundation in fact, perhaps in this manner. The county was at the time of the Conquest parcelled out into manors, as we have seen. In these manors a portion was always reserved as "the lord's waste," which served for roads and for common of pasture to the beasts of the lord and the tenants in socage of arable lands in the manor.

This waste was of the same tenure necessarily as the lord's own demesne lands, and therefore the wastes of all the manors mentioned in Domesday Book and other records of authority to have been held by a military or francalmoigne tenure, have never been gavelkind.

Although the socage tenants had a right to use the herbage of the soil, yet the soil itself belonged to the lord, and was, in nine cases out of ten, held in "ancient knight-service." This may have been the origin of the saying, that there was no common in gavelkind lands, or it may be merely an inference from the fact that all gavelkind, *ex vi termini*, must have been originally granted in socage and therefore would not have lain waste and commonable. But in course of time gavelkind manors or reputed manors were created in different parts of the

county, and in them the waste, if any, would of course be held by the same tenure as the manors themselves and the demesne lands; in these cases there certainly might be common in gavelkind land.

The question as to the tenure of the wastes of manors held by services is of high importance in Kent. In almost every parish in the county, cottages and gardens, rows of dwelling-houses, &c., are found upon the land which was the waste or common, whether the title of the first occupiers was that of mere intruders and encroachers, or derived from the lord of the manor enclosing portions of it. In every case where the demesnes are not gavelkind, these tenements situated on the waste are equally free.

As an example of the great size of some of these wastes we may refer to the waste or *minnis* of Swingfield, a manor held by military service from the earliest times. It is described as "a common about two miles and a half long, and not quite half a mile broad, consisting of about 550 acres of land. The property of this *minnis* was always supposed to belong to the Crown, and after the death of Charles I.[*] it was returned "that the *minnis* contained 540 acres, of the annual improved rent of £216, which the commissioners, finding to lie in common, imagined to belong to the Crown[*]." It was proved, however, to be common land belonging, subject to the rights of the commoners, to the barony of Folkestone.

[*] Hasted, viii. 121.

Among the most important of all the tracts of land which were wastes and heaths for many ages after the Conquest are Blackheath and Penenden Heath; but in every parish there are lands to which the foregoing remarks will apply.

[*] Parl. Surveys, 1649, 1650, in the Augmentation Office.

It is well known also that most of the town of Tunbridge Wells is built upon the waste land of the manor of Rusthall, in the parish of Speldhurst, the rights of the commoners having been commuted for a term of years at a yearly rent in 1670. "The building lease granted by the lord of the manor expiring in 1726, the tenants claimed compensation for the loss of the herbage which was covered by his houses. This occasioned a long and expensive suit, determined in favour of the tenants, who were adjudged to have a right to a third part of the buildings then erected on the estate, in lieu of herbage *." A partition was made and articles of agreement drawn up between the lord of the manor and his tenants, which were confirmed by a private act in 1740.

* Hasted, viii. 280.

It was, however, an ancient usage respecting common in *gavelkind* lands, that the lord could approve or enclose at his discretion, and hold the land himself without the consent of the tenants [t].

This had no reference to the case of a manor held by knight-service or in free alms from the first, where, though the tenants might hold in gavelkind, yet the soil of the waste was in the same tenure as the demesnes of the manor.

There is no need to discuss here the obsolete custom of gavelet, the liberties of bequeathing chattels, or the rules for distributing "the reasonable portion" to the widow and children of an intestate; there are, however, two ancient matters, of small interest now, on which a word or two may be written, especially as the first is not mentioned, and the second seems to be somewhat wrongly treated, in Robinson's work.

[t] Thomas of Feversham's Case, 17 Edw. II., Mayn. 502.

The first is merely a point of antiquarian interest, *scil.* that a leper could not inherit gavelkind land. This seems to have been the law all over England until the reign of Henry III. It was probably introduced from Normandy *. Though not mentioned by Coke, who merely states the general rule that leprosy was no impediment to descent †, there is no doubt that it was such an impediment in the reign of John. Hale cites the case of Fulch, a judge of that time, as one instance ‡, and in Pasch. 4 John, rot. 6 dorso, *Ruff* v. *Warin*, a leprous brother claimed certain gavelkind land, but was not allowed to inherit on account of his disease, and the land was adjudged to his sister Mabilla, viz. half a carucate in Sutton.

* Grand Coustumier, c. 27.

† Co. litt. 8 a.

‡ C. L. 123, Abbrev. Placitorum, p. 39.

The next point has been more discussed, viz. the claim by the men of gavelkind of two privileges in trying a writ of right, (1.) that the grand assise should not be chosen as was usual by four knights, but by four "men of gavelkind," who should choose out twelve other gavelkind tenants to try the cause, and (2.) that trial by battle should not be used in a writ of right of such lands.

Now that so many of the old trials respecting lands in Kent in early reigns are published, or rendered easy of access to the public, these privileges, now in themselves unimportant, may gain a new value in shewing whether particular lands were considered to be gavelkind or military, which we learn by ascertaining the mode in which trials concerning them were conducted. That the privilege was strictly restrained to gavelkind is seen by a case extracted by Robinson *, being a writ of right for four acres of meadow in Davington [u]. The demandants made title to the whole as gavelkind, and offered to prove it

* Pk. ii. c. 7.

[u] *Everard* v. *Champagne*; *Itin. Kanc.*, 21 Edw. I. 40.

according to the mode usual in trials concerning lands of that nature; but the tenant pleaded that half the land was "ancient knight-service," and claimed trial by battle or the Grand Assise summoned in the usual way. The jury found that *one acre* was not gavelkind, and rejected the demandant's claim.

The privilege as to summoning the Grand Assise by four gavelkind tenants is not disputed; the charter is enrolled which gave it[x], and is recited in the copy of the customs allowed in eyre 21 Edw. I.[y]

The abolition of real actions[z] has taken away the importance of the old Kentish mode of proceeding on a writ of right. Nevertheless the records of such proceedings are important as evidences of tenure. When the lands in dispute were descendible at common law, the Grand Assise consisted of four knights of Kent, who chose out twelve[a] other gentlemen in the county to declare upon their oath whether the right of the demandant to the land was greater than that of the tenant, or not. But if the

[x] Close Rolls, 16 Hen. III.

[y] An extract from a record of the "Pleas of the Crown in divers Counties," Trin. 25 Hen. III., No. 49, mem. 2, will shew the form of these trials.

"Twyfield P. Ric. de Swanton, Ric. Plogh de Peckam, Roger de Mara et Godefridus de Hamsted iiij. Gavelikindays sumuntur ad eligendum xij. Gavelikindays de visneto de Mereworth ad faciendam juratam loco magnæ assisæ, &c. inter Elenam filiam Will. Pet. et Will. filium Ricardi, &c. de viij. acris terræ, &c. in Mereworth." The names of the twelve "gavelkind men" follow.

[z] 3 and 4 Will. IV. c. xxvii. §. 36.

[a] Twelve was the number mentioned in the writ, and also in the oath of the four knights. But fourteen have been returned, and in *King* v. *Dryden*, Cro. Car. 511, twenty were returned, and it was said that the surplusage made the whole return bad. The court, however, held it good, and cited several precedents for the decision. (Co. litt. 129 a; Harg. n. 2; Booth on Real Actions, 96; 2 Ro. Abr. 674.)

lands were gavelkind, we have seen that four tenants of gavelkind chose twelve others to be jurors in place of the Grand Assise. Thus by the mode of trial we gain an indication of the tenure.

There is a detailed account in Hasted's History*, of a trial of this kind concerning the estates of the Earl of Leicester, in 1782, which illustrates this.

* Vol. iii. 243.

In 1738 Joceline, Earl of Leicester, suffered a common recovery of the manors of Penshurst, Cepham, Havenden Court, Hepsbroke or Ford Place, West Lyghe or Leigh, East and West Ewehurst, Ensfield, and Rendsley, Penshurst Place, Penshurst Park, the advowsons of Penshurst and Cowden, the rectories of Lyghe and Ensfield, divers woods in Penshurst, Lyghe, Bidborough, Tunbridge, Chidingstone, and Speldhurst, Ford Place farm, being the demesne lands of Hepsbrook Manor, Redleaf House, with other lands, tenements, and hereditaments, to the use of himself, his heirs and assigns.

But his nieces, daughters of his elder brother, who had died before he succeeded to the title, insisted that by suffering this recovery he had forfeited his estate for life, and claimed the above-mentioned estates by virtue of a settlement made by the Earl's father in 1700, as heirs of the body and heirs general to Robert, Earl of Leicester. They began proceedings in Chancery in 1739; the Earl died in 1743, and devised the property in dispute to his natural daughter.

After much litigation, a compromise was effected, the said Kentish estates being divided between the two nieces and their husbands, in consideration of a rent-charge paid to the late Earl's daughter, &c. This was confirmed by a private Act of Parliament, 20 Geo. II.

In 1770 the whole of those estates had come, partly by

purchase and partly by that Act, into the ownership of Elisabeth Perry, one of the claimants under the settlement of 1700.

But a son of the Earl of Leicester, John Sidney, Esq., in 1782 set up a claim to the whole of them, as his legitimate son and heir, and the cause was tried in the Common Pleas on a writ of right, by a Grand Assise consisting of four knights of the county of Kent, with twelve others, to determine the rights of the parties.

Mrs. Perry being in possession, and the late Earl having devised his interest in the lands to his daughter, it was decided that the tenant had more right to them than the demandant, and the Grand Assise gave a verdict in favour of Mrs. Perry for the whole.

Had the lands been of gavelkind nature there could have been no Grand Assise of this kind, but only a jury of twelve gavelkind tenants summoned by four others "according to the law and custom of Kent."

It is true that the free tenure of most of these lands can be proved in other ways, e.g. to take the most usual course of proof, they paid aid to make the Black Prince a knight in 20 Edw. III., as is recorded in the "Book of Aid," and were therefore held by ancient knight-service [b]. But the record of the trial by the Grand Assise is also a useful piece of evidence in this and a great many other cases.

But Robinson expressed great doubts as to the second privilege, and gives several reasons for disbelieving that trial by battle was disallowed on lands of gavelkind tenure.

[b] Aid *pur faire fils chevalier* or *pur fille marier* were not due from lands held in francalmoigne in Kent. See Prior of Thurgarton's Case, 1 Edw. II.; Prior of Boxgrave's Case, 9 Edward II.; Sunninghull's Case, 1 Edw. II.: and Walter Cockfield's Case, 9 Edw. II., cited in Madox, Exchcq. 416.

First he notices that the word 'battle' is omitted in Tottel's printed edition of the Custumal, and in the Lincoln's Inn MS. Moreover it is not mentioned in the charters of Henry III. quoted by him, and several MS. copies of the Register of Writs are worded as if battle were allowed in gavelkind.

Against this we can shew Lambarde's opinion: "Battle it admitted not at all, and altereth the other (the Grand Assise)*." He also expressly warns readers against Tottel's edition of the Kentish Customs, and refers us to his own copy, "with much more faith and diligence long since (21 Edw. I.) exemplified;" this copy has been received as good evidence of the law of gavelkind in the higher courts (*Launder* v. *Brooks*), and in it we find these words, "que de tenementz que sont tenus in gavelkind ne seit prise battaille."

* Peramb. 549.

Besides this there is a case, which Robinson had not seen, which of itself would settle the question. It is recorded in the Winton Roll, 40 Hen. III. rot. 5, *Pettes* v. *John son of Bernard*, and it is there expressly allowed that there could be no trial by battle for gavelkind land.

John de Pettes and his brother Maurice[b] claimed against John son of Bernard thirteen acres and a half of land in

[b] "Johannes de Pettes et M. frater ejus petunt versus J. filium Bernardi tresdecim acras terræ et dimidiam cum pertinentiis, &c., in Bakethald. . . . Et J. fil B. offert hoc probare per corpus suum. Et J. et M. dicunt quod duellum non debet inde inter eos fieri, quia dicunt quod Robertus antecessor eorum tenuit terram prædictam in gavelkind, et similiter J. fil. B. illam tenet in gavelkind. Unde dicunt quod non debet duellum inde fieri nec magna assisa nec de aliquo tenemento quod teneatur in gavelkind nisi tantum jurata xii tenentium in gavelkind, &c. Et ponunt se in juratam xii. tenentium in gavelkind loco magnæ assisæ. Dies datus est eis a die Pasch. apud Wilton et tunc veniunt iv. gavelkendi, &c."—40 *Hen. III., Abbreviatio Placitorum.*

'Bakethald,' and John son of Bernard asserted his right to retain the land, and offered to prove it by his body, &c., according to the usual form of trial by battle. But the demandants shewed that the land was gavelkind, and said that therefore there could be no trial by battle nor Grand Assise, either of this or any other gavelkind tenement, but only a jury of twelve gavelkind tenants, according to the law and custom of Kent. To this the tenant agreed, and four "gavelkind men" were called, who summoned twelve others in the manner described in the Custumal.

In the next place Robinson remarks "that one of the last instances in our books of battle joined in a writ of right was between *Lowe and Kyme demandants and Paramour tenant* for lands in the Isle of Harty, *which were gavelkind, for the title depended upon the alienation of an infant*[d]."

This would be an important authority for his opinion if these were all the facts, but in reality the lands were not gavelkind at all, nor could they have been at that time supposed to be so held; for the court was very anxious to prevent the barbarous mode of trial by battle, as we learn from Coke, and would have strained any precedent to prevent it. Had the land been gavelkind this might have been done either on the wording of the Custumal as allowed in Eyre, or on the authority of the case just cited, Pettes' Case. We find, however, that the Justices of Common Pleas were compelled to allow the duel between the champions of the parties, who met at Tothill Fields, Westminster, "where after much formal solemnity, and proclamation being made, the non-appearance of the demandants Kyme and Lowe was recorded, and a non-suit prayed, which was made, and the land was adjudged to Paramour

[d] *Lowe* v. *Paramour*, Co. Ent. 182, Dyer, 301 (13 Eliz.).

with costs of suit; for the Queen had so ordered, that they were not to fight. But every part of this form was adjudged necessary to ascertain the defendant's right, and the judges themselves would no doubt have been well pleased to have ousted the parties of this barbarous method of trial had the custom warranted them to do so, and it shews how much the example of it was disliked, since the Queen thought fit to interpose and accommodate the matter; and this is one of the last instances of battle joined in a writ of right*," (abolished 59 Geo. III. c. 46).

* Hast. vi. 279.

The lands in dispute were called the Moat, and were part of the manor of Harty, which was held anciently by knight-service. The Moat was part of the demesnes, which had been separated in the reign of Edward III., after which time it was reputed to be a separate manor.

The manor of Harty was held by knight-service in the reign of Henry III., Robert de Campaniâ, or de Champagne, holding it of the superior lord, John de St. John, as half a knight's fee, as is recorded in the *Testa de Nevil.*

In 1 Edw. III. the King's writ was directed to Robert de Kendal "to restore to the lady of Harty Island (sister of Thomas Roscelin) her lands in Kent, forfeited in his father's reign." She left three daughters, co-heiresses, among whom the manor and lands were divided, the third part, called the Moat, descending to Thomasina, wife of Thomas Chevin.

When the Black Prince was made a knight, in 20 Edw. III., all these portions of the manor paid aid as ancient military lands, at the rate of 40s. for one knight's fee: this may be seen by the Book of Aid compiled in that

year, where the owner of the Moat is set down for one-fourth of a knight's fee, and the Feodary of Kent, compiled by Cyriac Petit for the Exchequer in 35 Hen. VIII., records the fact that the land was continuously treated as military, and paid aid in each reign accordingly.

The Moat continued in the ownership of the Chevin family until "John Chevin, in 3 Eliz., by conveyance and fine sold it to Thomas Paramour, by the description of a manor and lands, &c., in St. Thomas in the Isle of Harty, of the fee of William, Marquis of Winchester, capital lord of it.

"But it being alleged by John Chevin, *that he was under age at the time of the alienation*, the fine was reversed, and he having in the meantime passed it away to Kyne and Lowe, they in 13 Eliz. brought the writ of right for the recovery of it*," which has been described.

* Hast. vi. 279.

It is clear from this brief account of the land in dispute that it was not gavelkind, but "ancient knight-service" land, recorded in the Exchequer from the earliest times to be of that tenure. Nor is there any mention of a customary feoffment made by Chevin as an infant in gavelkind; nor if any one had thought that it might be gavelkind would the duel ever have been awarded in the face of the Custumal, the charter of Henry III., and the early cases. Robinson, however, not having examined the Book of Aid, or the other records of the military lands of Kent, and seemingly not having read the first record of this case, and certainly not having met with the decision in Pettes' Case, assumed that it was gavelkind*, and that

* The property claimed by Lowe and Kyme against Paramour is described in Coke's Entries, *tit. Droit. Battaile.*, as one principal messuage, &c., with sixty acres of pasture, twenty acres of meadow, and fifty acres of marsh-land.

the received words of the Kentish Custumal were not a correct statement of the law.

It is more strange perhaps that Hasted, who had access to many of the records mentioned, should have also assumed on the authority of Robinson that the land was gavelkind; but his work is unfortunately very full of mistakes on the points of tenure, pedigree, and the like, which demanded the greatest care and accuracy in using the valuable materials collected by him.

Having now shortly discussed the chief points in the law of gavelkind since the Conquest, it is time to say a few words about those inferior tenures in Kent which were for a long time separate from and inferior to gavelkind. It must not be thought that all lands, which were not held in francalmoigne or by knight-service, were gavelkind in the early times immediately following the Norman Conquest.

The system of tenures was very intricate in Kent, possibly owing to the belief that "all Kentish men were born free." This caused the inferior tenures, which in other parts of the country would have been equally servile, to be distinguished in Kent by fine gradations of freedom, the lowest being a little above the condition of an ordinary villein.

Besides those inferior at first to gavelkind, there was the superior tenure of the Drengs (Threngs), or lesser thanes, already noticed. After a time this became obsolete and unknown on the estates of the Church, or rather was assimilated in almost every incident to ordinary knight-service. The same change took place in the rest of the county, probably at an earlier date, but this can hardly be affirmed with certainty.

There is an old book, once belonging to the Priors of Canterbury, which tells us all the incidents of the various

tenures allowed upon the manors, of which the seigniory and the demesnes were held in francalmoigne by them [f].

It appears from this *Liber Ecclesiæ Christi*, that the tenants were divided into four classes, viz. free tenants by knight-service, "men of gavelkind," free socagers, and cottiers also holding in socage.

The first class probably includes the successors of the Drengs, or Threngs, of the twelfth century. The incidents of their tenure were homage and fealty, wardship till twenty-one, payment of reliefs, dower of a third, and inheritance by the rule of primogeniture; the record adds, that it was the duty of these free tenants "socagium præstare," which means to pay a rent as in socage, military services being absolutely useless to a superior lord holding in francalmoigne. Besides, as we have seen, the Priors had given two hundred pounds' worth of land to the Archbishop, to do all military duties for them through his twenty-seven knights. It seems as if these free tenants must have been the lesser thanes or drengs, now called *Milites*, because their land was not socage or gavelkind, and because their duties were so like those of ordinary knights, and more rightly only called "Free tenants" because they paid a rent instead of doing service in arms.

The persons next mentioned are the tenants in gavel-

[f] *Liber Ecclesiæ Christi. Collectanea Historica*, Gul. Lambarde, Cotton MSS., Vespasian, A. v. 885.

"Milites sive liberi tenentes debent
- Esse in custodiâ usque ad unum ac vicesimum annum.
- Homagium facere.
- Relevare.
- Maritare.
- Dotare de tertio.
- Primogenitum succedere in totum.
- Socagium præstare."

kind[g], whose duties and privileges are sufficiently well known. The next are a more difficult class to understand. Those who have not seen the old Kentish records, especially the MSS. from the libraries of Christ Church and the Abbey of St. Augustine's, have before now insisted that no such persons existed as free socmen of a class inferior to gavelkind tenants, whose land descended to the eldest son. Yet here are tenants of "free socmanries" described[h], who did *certain* services, and whose eldest son succeeded to all the inheritance, and yet whose condition in many respects was hardly different from the serfs, or in later times the copyholders, in other counties. They might not give or sell their land without license from the superior lord, though all tenants of gavelkind might aliene without any such license, provided the rents and services were not diminished*. They might not sell a male beast of any sort from their homestead, nor marry their daughters without paying a fine to the lord of 7s. for every daughter married. This fine was called *mer-*

* Kentish Custumal.

[g] From the same MS.:—

"Gavelkendi debent
- Feoditatem facere.
- Esse in nutriturâ propinquioris.
- Consanguinei usque ad xv^m^ annum.
- Recognitionem domino pro terrâ facere.
- Dotare de medio.
- Omnes participabunt."

[h] From the same MS.:—

"Liberi Sokmanni possunt
- Dare, vendere libera sokmanria sed ad voluntatem domini.
- Non alienare.
- Facere certa servitia.
- Antenatus succedet in totum.
- Averium masculinum non vendere.
- Non filiam maritare nisi det vii. solidos.
- Filium omnino clericum facere."

chetum: it was usual only upon servile tenements, as will be seen in the chapter on Burgage.

Their sons might be admitted to orders, with leave from the lord, or not, a regulation probably introduced because the lord in this case was an Ecclesiastical Corporation. In a free tenure no mention of such a liberty would have been required.

These men appear to have been the *Bordarii*, or cultivators of the lord's demesne, so often mentioned in the Domesday Survey of Kent. They were free, and had strips of land, but clearly did not hold in gavelkind.

The next, and the lowest class, were the Cottiers or cottagers, who were in reality villeins or predial serfs. The lord might tax them high or low at his pleasure; there was nothing they could call their own, and whatever they acquired belonged in strict law to the lord. They differed only from the serfs in other counties in their personal freedom: they differed from tenants in gavelkind in almost every incident of their tenure [1].

The true estimate of their position is given in the Pleas* of the Crown, Pasch. 14 Edw. II. 19, when it was said "the services of these borderers, or cultivators of the demesne, are most servile," though they were just within the limits of free socage tenure. ("Servicia bordariorum (Bord-men) sunt multum servilia.")

* Abbrev. Placitorum.

There was one more class of rustic tenants, most common on the manors of the Bishop and Prior of Rochester,

[1] From the same MS.:—

"Cotarii debent
- Sokmanria sua quæ dicuntur coteria talliare ad voluntatem domini.
- Facere servitia incerta.
- Nil dare nec vendere nec proprium habere.
- Nil acquirere nisi ad promotionem domini sui."

and of the Archbishop, scil. neats (*nativi*), or *neat-men*, "who were a little more free than the cottagers, having each of them a rood, or at least half a rood of land, of their own[k]." They were not however as free as the tenants in gavelkind, as may be seen by comparing the description of the two tenures in the Custumal of Rochester, and the general Custumal of Kent. For one day in the year the lord might put them to the most servile labour as a badge of their inferior position; for the rest of the year he could not exact more than the fixed service without their consent.

In some of the manors held by the monks of Rochester there was very little gavelkind, and a great deal of land held by these base tenures. For instance, the Rochester Custumal tells us that in Frindsbury there were only twenty-one 'yokes,' and in Stoke only nine 'yokes' of gavel-land, almost all, except the demesnes, being in a tenure hardly above villeinage.

About the time of Edward III. another change began to be felt in the system of Kentish tenures. The bondmen separated from the freemen, the latter coming all alike to enjoy the privileges of gavelkind, the former gradually winning freedom in the same way as ordinary copyholders[l].

[k] "Dominus potest ponere ad opera quemcunque voluerit de Netis suis in die St. Martini. Et sciendum est quod Neti iidem sunt quod Neat-men, qui aliquantum liberiores fuerunt quam Cot-men, qui omnes habent virgatas terræ, vel dimidias virgatas ad minus. In crastino non ponit eos ad opera sine consensu eorundem."—(*Custumal Roffense.*)

[l] Some of the cottagers obtained it more expeditiously by grant from the Archbishop, or other lord of the manor. Thus in a Custumal of Eastry manor, it is noted: "In eodem manerio mutati sunt octo cotarii pro gavelkende;" and "Midle-ferm tenet unum messuagium et tres acras, quæ solent esse cotariorum, modo reddit xl^{d}. de gablo." And from an Account-roll of Charing manor, A.D. 1230, the bailiff acknowledged the

There are not many copyholds in Kent, owing to this inclusion of all the borderers into the class of gavelkind tenants, their *customs* in all probability having before been in most respects the same.

The bondmen also seem to have followed the same customs, as far as their tenure permitted, e.g. to have divided the lands held by them at the will of the lord among all the sons, as in gavelkind. Somner cites a deed in which a division is made of land held in villeinage (answering to the bond-land of the Rochester Custumal, p. 10) "*sicut de* gavelkind."

Most of these serfs were found upon the lands of the Church, and, as the bishops always favoured enfranchisement, this class, as a whole, gained freedom quicker in Kent than elsewhere. The copyholders now pay different fines, heriots, and quit-rents from those of the freeholders, e.g. in Northfleet the heriot of the copyholders is one-half their annual quit-rent, that of the freeholders one-third; and, to take another instance, in the manor of Otford Weald the freeholders pay a heriot of their best living thing, or 3s. 4d. in money, and the copyholders pay a fine equal to their rent for one year instead of a heriot.

That individuals remained in servitude as late as the fifteenth century is proved by the will of Sir William Septvans, of Milton, near Canterbury, who bequeathed liberty to certain of his villeins born on his land[m].

receipt of a fine from certain cottagers that their tenements might be changed to gavelkind.—(Somner, Gav. 59.)

[m] This will is said by Somner, 74, to have been registered in the proper manner at Canterbury. It was dated 1407, and ran in these words:—"Item lego Standerd, Hamonde, Chirche, et Richesforde servis et nativis meis, pro bono servitio mihi ab eisdem facto, plenam libertatem, et volo quod quilibet eorundem habeat cartam manumissionis sigillo meo signatam, in testimonium hujusmodi meæ ultimæ voluntatis."

In speaking of any period after the reign of Edward III. we may for the future include among the gavelkind tenants not only the tenants of gavel-land proper, but the borderers or cultivators of the demesnes, and those cottagers who were raised by special favour to the same degree of freedom. A distinction in name seems to have been kept up, but the same law for the future applied to them all. (See a deed concerning the tenants of gavel-land and the tenants of in-land at Mepham, given at length by Somner, App., 288.)

Since this change it has been a correct statement of the law to say that all ancient socage lands in Kent are gavelkind. In the earlier times this could not have been said with truth, for, as we have seen, the borderers, who tilled the in-lands, were socage tenants of an inferior sort, and not included in the privileges of gavelkind. Even now, in some manors, we can discern the old limits of these two ancient tenures, now united.

For instance, in the Archbishop's manors of Shoreham and Chevening there are two sorts of free socage land, *Yoke-land*, or the ancient gavel-land, and *in-land*, or those parts of the old demesnes, which had been given to the "borderers;" both descriptions are gavelkind now, but the tenants pay different dues, the former owing a fine and a heriot of the best living thing on death or alienation, the latter being accustomed to pay instead of a heriot one full year's quit-rent, like the copyholders on other manors of the Archbishop [n]. But a difficulty still remains as to those free socmen mentioned above, whose land descended to the eldest son.

Lambarde held that all ancient socage was not gavelkind, and taking the distinction made by Glanville and Bracton

[n] Parl. Surveys, 1649, cited Hast. 3, 107.

between free and base socage, he maintained that the free *species* was not gavelkind. To support this an extract from the "Escheat Rolls" was produced by him, viz. *inquisit. post mortem* Walter Colpepper, 1 Edw. III., which shewed that the *liberum feodum* at Shirbourne descended to the eldest son, and was carefully distinguished from "tenements in gavelkind *." * Peramb. 540.

But, in the opinion of later authorities, Lambarde was wrong; first, because this *liberum feodum*, or frank-fee, means land held by knight-service, as opposed to gavelkind °. "This appears," said Robinson, "by numberless instances in the Kentish *iters* †;" and secondly, because he assumes that gavelkind is an inferior tenure to this free socage with descent to the eldest son. † Lib. i. c. 5; Somner, Gav. 56.

The truth appears to be this. The distinction between free and base socage did in some measure exist in Kent. Gavelkind answered to the free socage, and the lands of

° Lay-fee (*laicum feodum*) is used in the same way to mean anything not gavelkind in records of the time of Richard I. The common expression for disgavelling land was "de tenementis quæ sunt in tenurâ de gavelkind facere *liberum feodum*," e.g., in the Charter given by King John to the Archbishop of Canterbury. See also the case of *Gatewyk* v. *Gatewyk*, extracted at length by Robinson, book i. c. 5.

In a trial concerning lands at Chistley, in the reign of Richard I., the jury found that the gavelkind lands in that manor had been divided among the heirs male, but not those in dispute, because they were 'lay-fee,' purchased by one of the brothers. "Hugh Coffin seisitus de unâ carucatâ in feodo apud *Chisteley*. Et juratores dicunt quod H.C. habet fratres primogenitos qui partiti fuerunt cum eodem de *gavilicunde* quam habuerunt, sed non de istâ terrâ, quia est *laicum feodum* et purcacium, ipsius H.C."—(*Rotuli Curiæ Regis, Palgrave*, i. 442.)

In the case of *De Valoignes* v. *De Valoignes*, Pasch. 9 Joh. v. 7, the jury found that Warretius de Valoignes had died seised of certain land, "as land which has never been divided," ("sicut de illâ quæ nunquam partita fuit.") The lands thus decided to be descendible to the eldest son formed the estate of the Valoignes or Valence family in *Eggarton*, in the parish of Godmersham, and *Tremworth*, in the parish of Crundal.

the *liberi socmanni* and the *borderers* were held by inferior tenures.

The MS. lately quoted shews this very plainly. The *liberi socmanni* might not alienate their land except at the will of their lord; they might not even sell a male beast, or give a daughter in marriage without paying a fine, paid only by serfs in other counties. It would therefore be impossible to consider them a higher class than the tenants in gavelkind, merely because their land descended to the eldest son.

This kind of free socage was gradually absorbed by the dominant tenure of gavelkind, the rule of primogeniture being abandoned in order to share the extensive privileges allowed to the higher class. Thus the tenure of gavelkind gradually spread through the county, over all lands which had been even of the least free species of socage, and, as we have seen, over some of the cottagers' land, enfranchised by special favour and included very early among the tenements of gavelkind.

By the end of the reign of Richard II. the limits of gavelkind (as we now understand the word) were fixed *.

It has been since then the tenure of the county, "the common law of Kent †," extending throughout the whole county over all sorts of *ancient* socage land, including all the tenures inferior to knight-service, except mere copyholds, which have similar customs, but differ in their nature from freeholds of gavelkind.

But this general tenure does not extend to any of those tenements, which before the Conquest were called *Allodium* and Thane-land, and in the feudal times were held by a superior tenure to socage, *scil.* by barony, francalmoigne, castleguard, serjeanty, ancient demesne, and simple knight-service.

* 2 Edw. III. 12; 5 Edw. III. 64; 2 Edw. IV. 19.

† 5 Edw. IV. 8; 14 Hen. IV. 8.

CHAPTER VI.

The Domesday Survey.

Domesday Book.—Its importance in all questions affecting lands in Kent.—Ancient dimensions of land.—Sulings.—Ploughlands or carucates.—Dimensions of the Kentish ploughland.—Sulings.—Yokes.—Oxgangs.—Varieties of Gavelkind.—Copyholds in Kent.—Villeinage.—Military and Spiritual Tenures.

SOME knowledge of the contents of Domesday Book is required in an examination of the tenures of any county, but in a history of Kent it is indispensable.

We know that all land in Kent is presumed to have been ancient socage of the date of the Conquest, until the contrary is shewn, and nothing which can be thus proved not to have been ancient socage is now gavelkind. The date from which land in Kent has been held in a tenure superior to socage must, in general, be that of Domesday Book; and in the same way no custom of partition will be held good unless it is, or is presumed to be, of equal antiquity. If it arose within the time of legal memory, or even a little before the reign of Richard I., it is bad in law *.

* *Lushington v. Llandaff.*

This book records the exact amount of land in each manor which was held in demesne or in socage by the tenants, the owner of the manor and the services by which it was held.

It is the first authority as to tenures in Kent, though by no means the only one. By supplementing what we learn from it with the information contained in other records, as the Escheat Rolls, the Books of Aids levied on military lands, the Pleadings *De Quo Warranto*, the Feodaries of Kent, Fine Rolls, and other official docu-

ments preserved in Chancery, the Exchequer, and elsewhere, evidence the most minute will be afforded concerning the tenure of each manor of importance in the county.

But all the subsequent decisions were grounded upon the report of the Domesday Commissioners. For this record is in the eye of the law the unfailing authority on all points in the history of the Conquest of England, as was said in the great Case of Tanistry: "Notre record de Domesday est de melieur credit que toutes les forein discourses ou chronicles du monde *."

* Davis, 28.

"This incomparable record," says Hallam, "contains the names of every tenant, and the conditions of his tenure, under the Confessor as well as at the time of its compilation, and seems to give little countenance to the notion that a radical change in the system of our laws had been effected during the interval. In almost every page we meet with tenants either of the crown or of other lords, denominated thanes, freeholders, or socagers. Some of these, it is stated, might sell their lands to whom they pleased, (1.) others were restricted from alienation. (2.) Some might go with their lands whither they would, (3.) by which I understand the right of commending themselves to any patron of their choice. Others (4) could not depart from the lord whom they served: not, certainly, that they were bound to the soil, but that, so long as they retained it, the seignory of the superior lord could not be defeated †."

† Middle Ages, ii. 299.

We find all these four classes in Kent, viz. the villani, or gavelkind men, who might always alienate their land freely, so that the lord's rights were unimpaired; the *bordarii* and cottagers, who might never alienate without obtaining a license and paying a fine; the third class includes all the tenants in socage alike; and in the fourth are the lesser thanes or drengs, who became knights every-

where throughout Kent except on the manors of the priories of Christchurch and Rochester, when once the feudal system had been perfected [a].

An entry in the Escheat Rolls in the thirty-sixth year of Henry III. respecting the manor of Tringston, or Trianstone, in Burmarsh parish, will shew the care with which juries carried the history of particular lands back to the time of the Conqueror:—

"The jurors declared upon their oath that the said land of Tryeneston, immediately after the Conquest of England was given to a certain knight named Tryan, who held it as long as he lived; after whose death Hugo Tryan his son and heir held it, and after Hugo his son Robert Tryan. So that the said Tryan, Hugo, and Robert, held the said land without adverse claim upon them from the time of King William the Bastard unto the time of King John, who took it into his hands as an escheat together with the other 'lands of the Normans' (i.e. on the separation of Normandy from England, when the lands of all the tenants who chose to remain in Normandy were forfeited to the Crown), and banished the said Robert, the last-mentioned tenant, from the realm of England [b]."

[a] On the practical usefulness of Domesday Book, Mr. Taylor remarks:—"Among the most important of these inquisitions may be mentioned Domesday Book, a work of which every one has heard, though few persons are aware of its contents. . . . . It is not often available as practical evidence, owing to the frequent changes of name, which the hundreds and other places described in it have undergone since the eleventh century; though it is only just to our antiquaries to state, that this defect has to a certain extent been remedied by their learned labours." —(*Tayl. on Evidence*, 1484; *Ellis, Introd. to Domesday*, i. 34.)

Owing to the great abundance of early records concerning Kent, the inconvenience here mentioned of alterations in the names of hundreds and other places is very rarely felt in enquiries relating to this county.

[b] This verdict is published in the *Calendarium Genealogicum*, p. 47, 36 Hen. III. 82. In that year the manor belonged to the Hospital or

The office of these commissioners was to ascertain with precision "what and which the demesnes of the crown were at that time and in the time of King Edward the Confessor, and it hath ever since been counted the great index to distinguish the king's demesnes from his escheats and other lands, and from the lands of other men *." Each manor in Kent was surveyed, the name of the tenant *in capite* and of his sub-tenant being given, with a summary, in many cases, of the previous history of the land, and of its fluctuations in value. The demesne lands were carefully distinguished from the socage tenements of the *villani*, *bordarii*, and *cotarii*, the services of the different classes being sometimes distinguished. The number of slaves, if any, was noted, and a short account given of all the arable and wood and pasture within the bounds of the manor, of churches, mills, customs, amount of land-tax in the late reign and at the date of the Survey, and other important particulars.

* Madox, Exch., 296.

The old Kentish measurements of the land were given, as well as the new measurements, which the Normans were endeavouring to introduce simultaneously into different counties which had before no common standard of mensuration.

Since the compilation of the Survey their report has been the test used to resolve doubtful questions of tenure, of the imposition in earlier times of aids and tallages, and all disputes concerning ancient demesne, ancient mills, and prescriptions against tithes. In future it will be

Maison Dieu of Ospringe, being held *in capite* as of the honour of Peverel. The manor was held of this barony by the service of castle-guard of Dover Castle. It was always of military, as opposed to gavelkind tenure, as appears from the Book of Aid, 20 Edw. III., the *Testa de Nevil*, &c. For its subsequent history see Hasted, viii. 261.

used probably much more extensively in determining questions of gavelkind[c].

One or two examples will be sufficient to shew the form of description used.

1. East Peckham (Lands of the monks of the Archbishops).

"The Archbishop himself holds Pecheham. In the time of King Edward it paid tax for six sulings, and now for six sulings and a yoke ($6\frac{1}{4}$). There are ten carucates of arable. Two in demesne; sixteen socage tenants (*villani*) and fourteen husbandmen (*bordarii*) hold four and a half. There is a church, six slaves, one mill, six acres of meadow. Enough wood (in the Weald) to feed ten hogs. Of the land of this manor one of the Archbishop's tenants holds half a suling; it was taxed with the other six sulings in the time of King Edward, but it could not belong to

[c] Domesday Book was appealed to as legal evidence in very early times. In Gale's *Vet. Script.*, i. 124, Peter of Blois records that the monks of Croyland appealed to its authority *temp.* Hen. I. Other cases occur in the *Abbreviatio Placitorum*, e.g. "Abbas Sampson protulit cartas diversorum regum, et præterea pomit se inde super Rotulum Wintoniæ (Domesday Book)."—(*Abbr. Plac.*, 1 *John Suff.*, rot. 7, 22.) In 2 *John* the same evidence was admitted in a case of ancient demesne. Many other cases are noted in the Index to the *Abbrev. Placit.* It was admitted to decide a question whether certain lands were ancient demesne or *frankfee* (2 Edw. III. 15); whether certain boroughs were ancient demesne (Madox, *Firma Burgi*, 5); whether lands were held of the crown *ut de honore*, or *ut de coronâ* (Kelham, Domesday Illustr., 245). London was declared not to be ancient demesne by reference to it in 37 Hen. VII. 27. (See Index to Domesday, cv.; Hale, Common Law, 4th edit. 105; Dyer, 150; Lev., 106; Sid., 147; Burr. 1048; 2 Leon., 101; 3 Lev., 105.)

In 9 Edw. II. it was enacted that prohibition should not lie upon a demand of tithes for a *new* mill, since which time Domesday Book has been received as evidence of what mills are ancient.

Since the fourth Lateran Council, A.D. 1215, it has also been used to determine what lands were held by the Church free from payment of tithes by the exemption of Pope Paschal II. (Index to Domesday cv.)

this manor except in paying the tax, because it was free land (i.e. the tenant was a dreng or lesser thane).

"Richard of Tunbridge holds of this manor two sulings and a yoke ($2\frac{1}{4}$); there he has twenty-seven socage tenants (*villani*), who hold seven carucates, and wood enough to feed ten hogs; the whole value being £4. In the time of King Edward the whole manor was worth £12; when the Archbishop received it, £8; now what he holds is worth £8[d]."

2. Lewisham (Lands of the Abbot of Ghent).

"In the hundred of Greenwich the Abbot of Ghent holds Lewisham of the King, and held it of King Edward the Confessor.

"It paid then, as now, land-tax for two sulings.

"There are fourteen ploughlands of arable. In demesne there are two; and there are fifty socage-tenants (*villani*) and nine husbandmen (*bordarii*), who hold seventeen ploughlands.

"There are three slaves. Eleven mills, worth with the rent (*gablum*) of the socage-tenants, £8 12s. The profits of the port are 40s.

"Of meadow there are thirty acres, and enough woodland for the feeding of fifty hogs.

"The whole manor was worth £16 in the time of King Edward, afterwards £12, and now £30."

3. Part of Monk's Horton (Lands of Hugh de Montfort).

"In Stowting hundred, Ralph holds of Hugh (de Montfort), Horton. Two soc-men held it of King Edward. It paid tax for one yoke and a half. The arable land is one carucate and a half. One carucate in demesne. There are four socage tenants. One

[d] "The Saxon pound, as likewise that which was coined for some centuries after the Conquest, was near three times the weight of our present money. There were forty-eight shillings in the pound, and fivepence in a shilling; consequently a shilling was near a fifth heavier than ours, and a Saxon penny nearly three times as heavy. Soon after the Conquest the pound *sterling* was divided into twenty shillings."—(*Hume, Hist.*, i. 103.)

mill worth thirty pence. Ten acres of meadow. Wood sufficient for six hogs."

4. Otford (Lands of the Archbishop).

"The Archbishop himself holds Otford in demesne. It paid land tax for eight sulings. The arable land is forty-two carucates. In demesne there are six, &c., &c.

"Of this manor three thanes hold one suling and a half, and have there in demesne three carucates: sixteen socage-tenants (*villani*) with eleven husbandmen hold four. . . . The demesne of the Archbishop is rated at £60, of the thanes at £12, and what Richard of Tunbridge holds in his Lowy at £10."

It may here be noticed that the possessions of the class of *villani*, i.e. men of gavelkind, and of the borderers or husbandmen, who were a very inferior class of free tenants, are recorded indiscriminately. In later records the lands of these two classes are always kept distinct.

The examples here selected shew the truth of the statement that the English were often permitted to hold lands under the great Norman barons, undisturbed by the Conquest.

Before saying more about the contents of Domesday Book, it will be well to repeat in a few words the theory which we have adopted concerning the Kentish tenures before the invasion.

At a very early period the county was divided into (1.) Crown-land; (2.) Folk-land, the freehold of which belonged to the freemen of the district, "possession" being granted, for limited periods, at the court of such a district; (3.) Thane-land, which was commonly called Boc-land, or Book-land, from the practice of transferring it by charter (land-book); and, (4.) Gavel-land, tributary or socage tenements, granted by the King, the Church, or

the thanes to the free tenants who farmed such lands in their manors as were not required for the "board" or table of the lord.

Below this free socage land ranked the holdings of the husbandmen who cultivated the lord's portion of the manor; they were free, but for many generations did not share the privileges of the gavel-men. They have in Kent long been confounded with the class immediately above them, owing to their admission to these superior privileges. Here and there, however, traces of the distinction between the "borderers" and the higher socage-tenants still exist; for instance, in Fulham and other manors belonging to the Archbishop of Canterbury in Middlesex, the tenants have paid in our own time a small quit-rent of sixpence per acre as "bord-service," in lieu of finding provisions for his table[e].

In the period extending from the reign of Alfred to that

[e] "We find a very numerous class, above 82,000, styled *bordarii*, a word unknown, I apprehend, to any other public document, certainly not used in the laws anterior to the Conquest. They must, however, have been also ceorls, distinguished by some legal difference, some peculiarity of service or tenure, well understood at the time. A small number are denominated *cosceti*, a word which does in fact appear in one Anglo-Saxon document. There are also several minor denominations in Domesday, all of which, as they do not denote slaves, and certainly not thanes, must have been varieties of the ceorl kind. The most frequent of these appellations is *cotarii*."—(*Hallam, Middle Ages*, ii. 367.)

We have seen that these borderers are so called from the Board-land which they cultivated, in return for the free tenure of their parcels of land and cottages, which gained in course of time the title "*bords*." "Dominicum dicitur quod quis habet ad mensam suam, et idcirco Anglicé dicitur Bord-land."—(*Bract.*, 4, tr. 3, c. 9; *Co. Copyh.*, 9; *Co. litt.*, 5 b.)

None but the cottagers (*cotarii*) and the slaves were in Kent as badly off as the *villani* in other parts, "liable to be expelled on the least occasion, sometimes without any colour of reason, sometimes on some sudden fantastic humour,—'villenagium quod tempestive et intempestive pro voluntate domini poterit revocari.'"—(*Fleta*, 5, c. 5; *Co. Copyh.*, 6, 9.)

of Edward the Confessor, the folk-land was gradually absorbed into the demesne of the crown as a more monarchical spirit spread through the constitution *.

About the reign of Edward the Confessor a system of dividing the country into manors was introduced, having been in all probability borrowed from the Normans.

Since that time the manors of Kent have been divided into demesne lands and tenants' lands.

The former were retained by the lord of the manor, and were held by spiritual or military services since the Conquest, before which period they were free for the most part of any services except such as were due to the State from all allodial tenants; the demesne lands of the Church were the most free, being subject only to the Trinoda Necessitas.

In some of the charters of Battle Abbey the Conqueror defined this freedom to be "an exemption from all taxes that the mind of man can imagine;" from which phrase two of the principal title-deeds of that abbey were commonly called "Humana Mens."

Small portions of the demesnes were allotted to the cottagers (*cotarii*), a semi-servile class, and to the slaves, as tenants at will. In later times these men gained their freedom either by direct enfranchisement, most of the cottagers being early included among the "men of gavelkind," or by a slowly advancing custom of liberty, like the copyholders in other parts of England. The *villani* in Kent were tenants in fee of their lands, owing service of money or labour to the lord of the manor [f].

The limits of the demesnes and the tenants' land may be said to have corresponded with the earlier division of

* Kemble, Codex Dip. i. 104; Thorpe's Glossary 'Folk-land;' Allen's Royal Prerogative, 160; Hall. M.A., c. 8, note .

[f] "A perfect manor could never exist without a perfect tenure between very lord and very tenant in fee."—(*Co. Copyh.*, 31; *Att.-Gen.* v. *Parsons*, 2 Tyrwh., 223; *Glover* v. *Lane*, 3 T. R. 447.)

thane-land (allodial) and gavel-land (tributary land). At the Conquest there was no sudden shifting of the land-marks; the thane-land, i.e. the manors and demesnes, were held by superior tenures, and owed spiritual or military services, and the tenants' land continued to be held in socage, i.e. in gavelkind. In course of time the inferior tenures of the husbandmen, cottiers, and serfs became either gavelkind or copyhold.

There was no change of thane-land into gavelkind, but military and francalmoigne lands were still distinguished in Kent by the name of "frank tenement," or "frank fee (*liberum feodum*)."

Nor has there since been any change which could possibly convert lands into gavelkind, which were not held as socage at the beginning. Of course, in some cases, evidences of boundaries and of identity of lands and the like have been lost for a time, so that the temporary presumption has arisen, that the lands being in Kent are of the nature and tenure of gavelkind: but such a presumption can always be rebutted by production of the proper evidences of ancient freedom.

It is evident that the record in Domesday Book of the exact proportions of land in each manor which were held in demesne, and distributed among tenants in socage, must be of great importance to students of the tenures of Kent. By means of it we know what proportion of each manor was free from the nature of gavelkind, and if we can settle the value of the measures employed by the Commissioners we shall be able to express the amount of this free land or "frank-fee" in acres.

In most cases it has happened that the boundaries of the free and the tributary tenure have been so well preserved that we can identify the old divisions, and shew that the

same amount of land in each parish is free from the common tenure of the county, as was known to be free at the time of the Norman invasion. But this cannot be done by using Domesday Book alone, chiefly because our knowledge of the ancient measures of land in Kent is at present so defective. We therefore supplement the information gained from the great survey by means of later records, which have been numerous and well preserved, as will be seen by our references to them from time to time in later chapters.

In all arguments respecting the ancient English measures of land, we are forced at the outset to consider this difficulty, viz. that inasmuch as many of them were from the first essentially variable, it is hardly possible to reduce them to any of our modern standards. Some of them have nothing to do with the length and breadth of a *superficies*, but were fixed by political or economical standards, of which we have now in several cases forgotten both the principle and the use. Moreover in the early times before the petty kingdoms of England were consolidated into one state, each part of the country acquired its own system of measurement; one name was afterwards for the sake of uniformity applied to many different things, and it is now of course impossible to find any common ratio between them[g].

[g] In this way Hallam explains the curious variations in the size of the hundreds in various counties. "It is impossible to reconcile this to any single hypothesis. No difference of population, though the south of England was undoubtedly far the best peopled, can be conceived to account for so prodigious a disparity. I know of no better solution than that the divisions of the north, properly called Wapentakes, were planned upon a different system, and obtained the denomination of Hundreds incorrectly after the union of all England under a single sovereign." Sir H. Ellis calculates the hundred at a hundred hides of land in all cases. (Introd.

Confining now our attention to Kent, we find that we have some means of estimating the measures peculiar to the county. It is however a question upon which high authorities have disagreed, and therefore the following calculations are only intended as an attempt to find an answer to a problem, which may be solved in a different manner by those who possess superior information upon the subject.

Opinions have been much divided on this point, viz. whether the Kentish suling corresponded in size to the Norman carucate.

* Roman Ports, 92.

Somner* and others maintained that they were the same measure, and supported the statement by an argument on the similarity of their derivations.

Suling no doubt is derived from *sul*, 'a plough,' in the same way as carucate is formed from *caruca*. Moreover we know from an ancient record at Canterbury that "the land of three ploughs was called in Kentish three swolings," ("terram trium aratrorum quam Cantiani dicunt three swolings†"); but an examination of Domesday Book certainly leads us to the belief that the suling was a different measure from the carucate[h].

† Spelman, Gloss., tit. 'Suling.'

Occasionally the number of sulings and of carucates in

to Domesday, i. 185.) But there was no equality of size. "A passage from the *Dialogus de Scaccario*, 31, is conclusive: 'Hundredus est ex hydarum aliquot centenariis sed non determinatis: quidam enim ex pluribus, quidam ex paucioribus hydis constat.'"—(*Midd. Ages*, ii. 280.)

[h] "Sullerye (said Coke) also means a ploughland. Unum solinum or solinus terræ, containeth two plow-lands and somewhat less than a half, for there (in Domesday) it is said, septem solini, or solina terræ sunt 17 carucatæ."—(*Co. litt.*, 5. a.) See also *Archæologia Cantiana*, i. 234, and v. 284.

The word *sull* or *zull* is said not to be obsolete in Dorsetshire even now. *Sul-paddle* is a provincial word meaning ploughshare, and *sul-yard*, *suliard*, and *sull-sow* are similar forms known at any rate until recently in the west of England.

a manor is the same, e.g. "Hugo de Port holds Norton (in Faversham hundred). It was taxed at four sulings. The arable land is four carucates." The total acreage of the parish is 900 acres. Generally, however, the measurements disagree. For example, at Mepham or Meopham there were "in the time of King Edward ten sulings paying land-tax, now seven. The arable land is thirty carucates. There are four in demesne, and twenty-five villani, &c. have twenty-five." Now by the deed of composition, relating to the tenants of land in Mepham, A.D. 1306 (extracted in Somner's Appendix), it appears that these twenty-five carucates were in reality twenty-five yokes or quarter-sulings.

Again, Cuxton or Cookstone manor "paid tax in the reign of King Edward for two and a half sulings, now for two. The arable land is six carucates. In demesne there are two ploughs," &c.

In Trosley (Trottescliffe) the suling and the carucate are mentioned as if they were the same measure. "Once this manor paid for three sulings, now for one. There are three carucates of arable. One suling is in demesne, and there is one plough, and ten villani have two carucates."

Such, however, is the diversity of the entries that it seems to be almost impossible to ascertain any fixed ratio between the suling and the carucate, the Kentish and the Norman ploughland.

We know from Domesday Book that there were over 1,100 sulings in Kent, and from the valuable manuscript in the Cottonian Library, *De Suylingis Cantiæ*, that after the Conquest there were 1,081 sulings in the county, excluding the land in the King's demesne. But in the Survey we find that by the Norman measurement there were over 3,000 carucates or lands tilled by one plough in the year.

Any system of measurement by ploughlands must allow for the difference in the soil, so that a ploughland in one part would be larger than in another part of the same parish[i].

Two separate scales of measurement were used in Kent, besides the carucate, which varied as we have seen: viz. measurement by the suling with its subdivision into yokes (*juga*), and measurement by hides and virgates.

For instance, in an old Assise Roll of proceedings at Canterbury, 12 Edw. II. (quoted in Agard's tract), it is said that "in Hokinton are twelve hides, each containing six-score acres[k]."

But instances of measuring by the hide in Kent are comparatively rare compared to those where the suling is taken as the standard of mensuration.

It is frequently stated in ancient records that the hide (often called carucata) contained eight oxgangs, each of fifteen acres, so that it equalled 120 acres or 100 "by English tale," (*Anglicus numerus*). The English were long accustomed to reckon by "the long hundred of six-score[l]."

[i] "One ploughland is not of any certain content, but as much a plough can plough in a year, and it may contain a messuage, wood, meadow and pasture, because by them the ploughmen, and the cattle belonging to the plough, are maintained. Note also that every ploughland of ancient time was of the value of five nobles per annum (33s. 4d.), and this was the living of a ploughman or yeoman."—(*Co. litt.*, 69 a, 86 b.)

For other estimates of the value of a carucate see Agard's tract on the dimensions of land; Palgrave, *Rotuli Curiæ Regis*, vii.; Bracton, ii. 26, 8; Kelham, Domesday Illustr. i. 169.

Fleta gives this description of it: "If the land lay in three common fields, then 180 acres went to the ploughland, viz. sixty for winter, sixty for spring, and the rest for fallow."—(*Lib.* ii. c. 72.)

[k] Compare Cust. Roff. 3, 4, 9, 10; Cott. MSS. Vesp. A. 22; Registr. Roff. 63.

[l] "Centum acras de centum et viginti ad le centum." Book of St. Mary's Church, Warwick; Brit. Mus. Add. MSS. 6032; Ellis, Introd. to Domesd., tit. Acre; Hickes' Thesaurus; Crompt. Jurisdict. 222. "Duo

The hide had also in ancient times been used in Kent to mean the portion of land allotted to each free settler among the invading tribes. By the most ancient estimate of the contents which is known to exist, Kent contained 15,000 of these hides, (the whole of England, according to Spelman, containing 243,600) not including the uninhabited marshes or the forest lands which fringed each settlement, and bounded the village communities with sacred "marks" or marches, on which religion and policy forbade the freemen to encroach [m].

Mr. Kemble, one of the highest authorities on such points, has calculated that each of these hides contained forty of our acres.

Bede, in the History of England, remarks that the Isle of Thanet contained 600 of these 15,000 hides. Making due allowance for lands lost in the sea and gained from the river, and those which were at that time mere forest and marsh, Lewis, the modern historian of the island, has considered that the allowance of 600 hides, each containing 40 acres, was substantially correct [n].

According to Hasted's History, "the whole island contains about 3,500 acres of arable and 3,500 of marsh," with little wood, and no waste land at all *. * Hast. x. 223.

There are other indications that the *ancient* "hide" was a small measure as used in Kent. Thus we find by the records of Canterbury Cathedral that Otford manor contained 100 hides (taxed later for eight sulings, about 1,600

hidas quæ sunt duodecies viginti acras."—(*Agard's Tract. Cott. MSS.*, Faust. E. 5.

[m] Kemble, Anglo-Saxons in England, vol. i., chapter on Measurements; Hasted, vol. i. 301; Spelman, Glossary, 292; Feuds and Tenures, 17; Hume, Hist. i. 103.

[n] Lewis, Hist. of Thanet. *init.* Hasted., vol. x. 223, 225; Lambarde, Peramb., 97.

acres of arable), Graveney 32, Bereham 36, Hardres 104; and that the donation of King Offa in 790 comprised 90 hides, there called "*tributaria terræ* *."

* Monasticon, i. 96.

These small hides were called *manses*, *mansuræ*, *tributaria*, indifferently. The *manses* possessed by the burgesses of Canterbury at the Conquest are hides of this kind, and not "dwelling-houses," as the phrase has often been translated.

But, as we have seen, the word "hide" had another meaning in later times, viz. a piece of arable land containing in general 120 acres.

It will be seen that it is not of much use for our present enquiry to make further calculations as to the measurement of Kent by hides. We will only notice that the 600 hides of Thanet appear later as 66 sulings, and the 15,000 hides of Kent as 1,144 sulings, paying land-tax.

Returning to a consideration of the last-named measure, we may examine those records which define its contents in *acres*. But here we must consider whether the acre of the earliest deeds is indeed the same as our own, and what, if any, was the difference between the customary and statutory acre in Kent.

This is fortunately not such a difficult question. Kemble said generally that the ancient English acre did not much differ from the modern measure of 4,840 sq. yds. In Kent, however, there certainly was a difference of a considerable importance.

Coke writes: "The contents of an acre are known. The name is common to the English, German, and French. Acra in Cornwall continet 40 perticatas in longitudine et 4 in latitudine, et quælibet perticata de 16 pedibus in longitudine †." In other words, the acre here described contains 160 perches, each perch being measured by a rod

† Co. litt. 5 b.

of sixteen feet, instead of sixteen and a half, as in the common acre.

The Kentish acre was measured in the way described by Coke*. Varying indefinitely in length and breadth, it was always a piece of land containing 160 perches of sixteen feet square, i.e. a fraction over 4,551 square yards. Thus 1,000 statutory acres would contain over 1,063 customary.

* Ellis, Introd. to Domesd.

There was a custom of measuring forest land by a rod of 20 ft., and in some places a rod of 17 ft. was used.

In the measurement of the lands of the Abbey of St. Augustine taken in the reign of Richard II., and preserved by Thorn, the chronicler of that Abbey†, it is recorded that, "in Snave the Abbot had 248 acres measured by the rod of 20 feet."

† Decem Scriptores, 2,032.

In some parts of the Weald of Kent, especially about Cranbrook, we find mention made of "Flemish acres," and there are in the Register of Battle Abbey conveyances of land measured in this way: e.g. Stephen de Godintun made a feoffment in confirmation of a grant, made by him and his father for the health of their souls, of twelve Flemish acres of marsh land to the church and monks of St. Martin, at Dover. This was probably owing to the immigration of Flemish clothiers into that part of the county.

But the Kentish acre contained 160 perches of the size above mentioned. "The elementary acre" was forty of these perches in length by four in breadth, but it was found convenient in practice to use acres of different length and breadth, care being taken that the superficies should always be the same if possible. Thus an acre eighty perches long was two perches in breadth. We have a canon or rule of measurement used by the Abbey of

St. Augustine, which shews how much the acre varied in shape, and how accurately land was measured in early times °.

When we know the ancient dimensions of the acre we can estimate the size of the "day-work," which contained four perches of sixteen feet, being the fortieth part of an acre.

This is a very common measure in Kent; e. g. in 1 Edw. I. Robert de Crevequer granted to William Ken one rood and six 'deywerks,' called Brook, in Little Wrotham. In Hil. 33 Edw. IV. Exch. a Kentish jury found that "the land called Priest-feld is glebe, except one rood, and eight deyworks, which make one-fifth of an acre *."

* Registr. Roff. 582, 696.

And in the Register of Battle Abbey we read that "Lucas at Gate of Bexley enfeoffed the sacristary of Battle Abbey of four dayworks in the field called Wulneveland."

The same measure is used in the survey made of the city of Maidstone in 1597.

There is another measure which occurs both in Domesday Book and in later records as applied to lands in Kent. This is the 'oxgang,' or bovate, which seems at first to

° Taking the perch at sixteen feet, the canon shews the breadth of an acre for each perch in length. Thus the common proportion would be,—

LENGTH, IN PERCHES.	BREADTH, P.	F.	IN.
40	4	0	0
or 80	2	0	0

The other measurements were as follows:—

LENGTH, IN PERCHES.	BREADTH, P.	F.	IN.
76	2	1	1
64	2	7	4
50	3	2	2
26	6	2	4
23	6	15	3

The table is calculated for acres of all lengths, between 23 perches and 76 perches. (*Thorn, X. Scriptores,* 2,032.)

have been as much arable as an ox could plough in a year. It is frequently described as the eighth part of a hide, or fifteen acres [p].

We now come to a measure which has given its name to many districts in different parts of Kent, viz. the Yoke-land or *jugum*. Several manors are still divided into yokes. The yoke was the fourth part of the suling, and varied in size from forty to fifty of our acres, or a little more.

Coke indeed suggested that "the yoke in Domesday contained half a plough-land *." This opinion seems to have rested upon an isolated passage in the description of Haydon Manor, or the Mount, in Cobham, viz.:— * Co. litt. 5 b.

"Ernulf holds of the Bishop (of Bayeux), Hadone. It was taxed as three yokes. The arable land is one carucate..... Odo holds of the Bishop in the same place *one yoke. The arable land is half a carucate.* In demesne there is nothing."

This passage is also quoted by Agard in the tract on dimensions of land. It is not deserving of much consideration, as Sir H. Ellis shewed in the preface to Domesday. There is another passage which shews very clearly what proportion the yoke bore to the suling.

It occurs in the description of the manor of Eastwell, and runs thus:—

"Hugh de Montfort holds one manor in Eastwell, which Frederic held of King Edward. *Taxed at one suling. Three yokes are within Hugh's boundaries, and the fourth yoke is without.*"

Before leaving the subject of the yoke-land we may notice some entries in the ancient account-rolls of the

[p] The oxgang varied in different counties. "Eight acres made an oxgang in the fields of Doncaster. Oxgang, yardland (virgate), and hide or ploughland are altogether uncertain according to the diversity of places."—(*Co. litt.*, 69 a. 2.)

monks of Rochester, which shew what the acreage of the yoke-land was in a great portion of Kent.

In the manor of Darent each acre of gavel-land (there called *terra gabla*) paid a quit-rent of one penny, and each yoke-land a quit-rent of forty pence.

In the rent-roll the names of the tenants, the amount of their holdings and of their rents, are set down thus *:—

* Custum. Roffense, p. 6.

TENANTS.	ACRES.	RENT. s.	d.
A. B.	25	2	1
C. D.	10	0	10
E. F.	12	1	0
G. H.	12	1	4
I. J.	*half a yoke*	1	8
Heirs of W.	*one yoke*	3	4
Heirs of Anselm	*one yoke*	3	4
Tenants in the Weald	*one yoke of gavel-land*	3	3
Of the demesne	eight acres	3	0

It may be seen from this table that the yoke-land, or quarter of the suling, was forty acres in Darent.

This gives 160 acres to the suling, which estimate may in general be depended upon, although it does not suit every district in the county, as will be seen from the following paragraphs.

As to the dimensions of the suling. There are great difficulties, as has been seen, in fixing upon any estimate which will suit the dimensions of the suling in every part of the county.

There are more reasons in favour of an estimate of 160 acres of arable than of any other. In some of the manors, however, of the see of Rochester it contained 180 acres, and in the Isle of Thanet and the neighbouring possessions of the Abbey of St. Augustine 200 and even 210 acres.

1. The rent-rolls just quoted shew that in Darent at

least the yoke, or quarter of a suling, was a measure of forty acres.

This measurement is confirmed by several entries in the Survey and elsewhere.

2. For example, the Bishop of Bayeux held eighty acres of land in Hollingbourne, and it was recorded that "*this half-suling* which never paid land-tax is rented by the Bishop of Bayeux from the Archbishop," ("hunc dimidium solinum qui nunquam reddebat scottum tenet Episcopus Baiocensis de Archiepiscopo ad gablum *.")

* Domesd. 4 b.; Henshall, Summary Tables.

3. Again, the small manor or reputed manor of Poole, in the parish of Southfleet, was given to St. Andrew's Priory by the Bishop of Rochester upon the division of their revenues. We know from the *Registrum Roffense* that it contained exactly *eighty acres* †, and from a record in the Cottonian Library that it was *half a suling* [q].

† Reg. Roff. 47, 606.

The same estimate of 160 acres is adopted by the latest writers in the construction of the following passage in the first page of the Domesday Book.

4. In the survey of the common lands of the Priory of St. Martin, at Dover, it is said, "in the common land are four hundred acres *and one half*, which make two and a half sulings," ("in terrâ communi S. Martini sunt 400 acræ *et dimidium* quæ fiunt 2½ solini.")

[q] "The sulings of Rochester." (Cotton. MSS. Vesp. A. 22, 69.) "In Hakestane hundred (Axstane) et Southfleet 5 solini, Poole ½ solini." See *Custumale Roffense*, 12, 32.

Hasted's account is inaccurate. "Pole or Poole is a manor here, which was anciently estimated at *one suling or ploughland*. It appears by the Book of Knights' Fees, taken in the reign of Edward I., and now remaining in the Exchequer, that Sara de Pole was owner of it in that reign, holding it in dower, as two parts of a knight's fee, of the Bishop of Rochester."—(*Hast.* ii. 432.)

It is entered in the Book of Aid, 20 Edw. III., as two-thirds of a knight's fee held in Southfleet. See the *Testa de Nevil.*

Agard considered that this *dimidium* means "half a hundred acres," and not half an acre. He was however mistaken in supposing that "half an acre" is never mentioned in Domesday Book. It is quite possible that in this place the *dimidium* should mean fifty acres, but very competent authorities are at present inclined to side against his interpretation*.

* Ellis, Introd. to Domesday, "suling;" Archæol. Cantiana, v. 284.

On the last-mentioned authority the "suling" in the estates of the Canons of Dover was equal to 160 acres. By Agard's construction of the words it would equal 180 acres; and corroborative evidence can be shewn for either estimate, which would seem to shew that the suling varied between those sizes in different parts of the county.

5. We have already noticed that the demesnes of Trosley or Trottescliffe manor were, at the Conquest, one suling in extent. In 1255 the manors of the Bishop of Rochester were measured and valued: it was then stated upon oath by the witnesses that the land retained by the Bishop was 200 acres of arable, on which there were three ploughs at work. So that in this case the suling was larger than we should have expected. The steward however asserted, when "diligenter examinatus," that by the custom of those parts (*consuetudine regionis*) each ploughland (*carucata*)—which must here be equivalent to the suling, however the two measures may differ in Domesday Book—contained 180 acres †.

† Registr. Roffense, 63, 64.

It is quite possible that the hundred of sixscore "by English tale" was used by the witness; in that case the one hundred and fourscore acres of the witness would correspond with the 200 acres of arable, which the "suling" held by the Bishop in demesne was found by measurement to contain.

In another part of the same survey it was found that

Borstall manor did not contain one ploughland (in demesne), but only 140 acres of arable.

6. In the same record it was found that the manor of Halling, with its appurtenances in "Cookstone and Holeberghe," had four ploughs upon the demesne, but not quite four customary ploughlands, i. e. sulings; four sulings on the last estimate would have contained 720 acres of arable, whereas in these manors were only 717 acres, a very trifling difference.

7. Sir H. Ellis, in his preface to Domesday Book, adduces evidence from an ancient chartulary, shewing that the Kentish suling was estimated out of the county at 200 acres.

8. It is possible that a further examination of certain deeds and records relating to the Church lands in the Isle of Thanet may set before us more clearly what the value really was of the measures into the nature of which we are enquiring.

The manors of Minster and Monkton with their appurtenances, belonging respectively to the Abbey of St. Augustine and the Priory of Christ Church, Canterbury, extended over the whole island, which in the most ancient times was estimated at 600 hides.

They were thus described in Domesday Book:—

"The Archbishop himself holds Monkton. In the reign of King Edward it was taxed at 20 sulings, *and now at* 18. Thirty-one carucates of arable. Four in demesne. Fourscore and nine *villani* and twenty-one *bordarii* hold twenty-seven[r]."

[r] "The demesnes of Monkton," says Hasted, x. 235, "are very extensive, the rack-rent being upwards of £700 per annum" in his time. He adds, "The extensive demesne lands might well employ *fourscore and nine villeins*." This of course is a mistake. The *villani* in Kent were free tenants in socage (gavelkind), and the demesnes were cultivated by the husbandmen or *bordarii*.

"The Abbot holds Tanet (Minster), which was taxed *at* 48 *sulings*. The arable land is sixty-two carucates. Two in demesne: 150 *villani* and 50 *bordarii* hold 63; ..... of this manor three knights (*milites*) hold as much of the villeins'-land (gavelkind) as is worth £9, &c., and there are three carucates."

There were therefore in the two manors, including their dependencies, St. Nicholas, Sarre, All Saints, Birchington, St. Peter's, Ramsgate, Margate, and Stonar, sixty-six sulings altogether paying land-tax.

The demesne lands of the Church, *which were held in francalmoigne*, did not pay this tax, so that there were sixty-six sulings of gavelkind land, besides the demesnes.

The demesnes of Minster were 435 acres of all sorts of land, as may be seen in the Register of St. Augustine's Abbey, and the accounts and measurements preserved by Thorne, chronicler to the abbey*. If the 66 carucates of the tenants' land were equal to 48 sulings, the demesnes must have held about $1\frac{1}{3}$ suling. Those of Monkton were nearly three sulings ($2\frac{2}{3}$), as may be calculated from the extracts given from Domesday Book.

* Decem Scriptores, 2031, 2.

It remains to see whether this estimate of the gavelkind land in the Isle of Thanet was considered in later times to be correct. This we find to be the case. Thus in the Custumal of Monkton manor preserved at Canterbury the rents and services are enumerated which were due from the tenants of "*the eighteen sulings held in gavelkind of the monks*," at a time when the demesnes were preserved quite distinct from the socage portions of the manor[a]†.

† Somner, Gav. 58; Hasted, x. 256.

[a] The manor of Monkton extended over the parishes of Monkton (2,364 acres), Birchington (1,680 acres), and Wood or Woodchurch, which at that time was almost covered with wood. (Lewis' Hist. Thanet; Hasted, x. 311.) It will be seen that the acreage of the manor corresponds, as nearly as we can estimate the acres under cultivation, to the proper number of sulings, viz. a little under twenty-one.

Again in the composition made in 19 Henry VI. between the Abbot of St. Augustine and the tenants of his gavelkind lands, it appears that the measurements given in Domesday Book were found by actual admeasurement to be correct at that period within a very small fraction.

This deed recites[1] that in Minster are 47¾ sulings and 38 acres, paying "gavel" or rent either in corn or money: the distinction between the services points to the ancient difference between the *villani* and the *bordarii* or husbandmen bound to find provision for their lord's table.

Of these 42¼ and 38 acres were "penny-gavel land," sometimes called "in-rent land;" the rent was fixed for the future at eightpence per acre, and at double that amount for the 4⅜ sulings of "corn-gavel land," sometimes called "in-court land." "This composition," says Hasted, "still continues in force." The reputed manor of Hengrave (203 acres) in Margate was made up of this "corn-gavel land*."

* Somner, Gav. 17; Hasted, x. 341.

The deed then proceeds to define the extent of a suling in the Isle of Thanet, which it fixes at 210 acres. "Quælibet Swilling continet in se ducentas et decem acras terræ."

Thus 48 sulings of gavelkind land were equal to 10,080 acres of arable, and the two manors with their demesnes, *circa* 70 sulings, would be *circa* 14,700 acres of arable; in which calculation Lewis, the historian of Thanet, agrees. At present there are 23,000 acres of arable land in the island.

[1] A copy of this deed may be seen in Somner's handwriting in the library of Canterbury Cathedral. It was printed in Lewis' Hist. of Thanet, p. 86; Appendix xv. See also Somner on Gavelkind, 17, 26, 58, 117; Madox, Exch., 484; Thorne's Chronicle, Appendix, in the *Decem Scriptores;* Hasted, x. 275; Selden on Tithes, 321, 331.

9. We have now got various data for determining the extent of the suling. In different parts of the county we have seen that it was 180, 200, and 210 acres. (According to one calculation it was only 160 acres in Dover.)

There was one more deed, preserved in the registry of St. Augustine's Abbey, which recited that the suling contained 200 acres, the most usual estimate.

The manor of Norborne or Northbourne contained thirty sulings of gavelkind land. In the demesne of the Abbot of St. Augustine's were two ploughlands, and an English free tenant held of them one suling, besides portions of the gavelkind land (*terra villanorum*).

In 1364 the Abbot entered into a composition with his tenants, who wished to commute their services; they agreed to pay in future 14d. yearly rent per acre in each suling, "and each suling in Northbourne contains 200 acres*."

* Thorn, Decem Scriptores, 2203.

10. In the same deed it was declared that each acre in the manor of Ripley was worth 3d. yearly, "and each suling in Ripple contains 200 acres."

This shews that the suling did not vary in all cases with the annual value of the land, but fluctuated in extent only within certain recognised limits. From these calculations it results, that while in most cases the Kentish suling contained 160 acres of arable land, in certain parts it varied from 180 to 210 acres.

We could not by the light of Domesday Book alone define with any exactness the limits of the ancient socage tenements in any particular manor; that can only be done in each case by a comparison of later evidences and records, e. g. the particulars of grants by letters patent, the inquisitions *post mortem*, the feodaries and other official documents preserved among the public records, and title-

deeds belonging to private families. The registers, 'ledger-books,' and chartularies of the ancient Kentish monasteries are full of valuable and accurate information respecting the proportions of demesne lands to socage in each estate. These are dispersed among the collections in the State Paper Office, the British Museum, and many private libraries [u].

Before the Norman invasion Kent had been divided primarily between the King, the Church, and the great thanes, representing the tenants *in capite* or barons.

Out of 430 manors described in Domesday Book as lying within its precincts, not fewer than 194, or nearly one-half, belonged to the Crown.

The remainder was unequally divided among the Archbishop, the Bishop of Rochester, the Abbots of St. Augustine and St. Martin at Dover (Mass-thanes), and among the Queen, the Earls Godwin, Harold (king), and Leofwin (son of Godwin), and the nobles, Alnod, Brixi, and Sbern *. These eleven (says Henshall †) were the great tenants in chief, the principal thanes, the "peers of Kent," "and it is to be observed that the Conqueror, when he distributed

* Lingard, i. 342.

†Summary Tables of Lands in Kent, 20.

[u] "It is much to be lamented," says Hasted, "that in the hurry of this dissolution of monasteries great numbers of excellent books, and other manuscripts, were made away with and destroyed, to the unspeakable loss of the learned world; for there was scarce any religious house that had not a library, and several of them had very good ones. From their chronicles, registers, and other books relating to their own houses and estates, the history and antiquities of the nation in general, and of almost every particular part of it, might have been more fully discovered. The many good accounts of families, of the foundation, establishment, and appropriation of parish churches, and the endowment of their vicarages; of the ancient bounds of forests, counties, hundreds, and parishes; of the privileges, tenures, and rents of many manors and estates, and the like, which we meet with in such of their books as are still remaining, are sufficient testimonies how great the advantage would have been had there been a greater number of them preserved."—(*Hast.* i. 332.)

the county among his followers, still kept up the same number of tenants in chief."

This last statement is incorrect, inasmuch as the estates of the Prior of Christ Church, Canterbury, had been held directly of the Crown, and quite independently of the Archbishop, from the early times of Archbishop Theodore; and Lanfranc, in separating his revenues from those of the monks, only restored the ancient order of things, as appears fully from the letter of the monks to Henry II., extracted in an earlier chapter.

After the invasion William only kept a small part of Kent in his own hands, as will appear in the chapter treating of Ancient Demesne; but he gave 184 manors to Odo, his half-brother, Bishop of Bayeux and Earl of Kent.

Odo, it appears, did not keep more than a dozen manors in his own hands, giving the rest out to his tenants by military service, many of them being Englishmen, the old owners of the land. On his disgrace, four years after the completion of the Survey, his estates were divided. Where a baron had been his tenant, the same man was allowed to hold the manor direct of the Crown, in general by the service of defending Dover Castle. The seignory over his other lands was transferred to some other baron, with the services and rents of the knights and tenants in socage.

The list of the great Kentish landowners at the date of the Survey may be drawn up thus:—

1. The King, who retained the ancient demesne, which had belonged to King Edward, and all the royal hunting-grounds in the Weald and other forests, with certain cities held in demesne or by a fee-farm rent.

2. The Archbishop of Canterbury, who held vast estates by barony, although the Earl of Kent for a time deprived his see and that of Rochester of a great number of manors,

recovered in the suit before the sheriff on Pinenden Heath, near Maidstone.

3. The knights of the Archbishop, who had the seignory over twenty-seven 'knights'-fees.' In the Black Book of the Exchequer (p. 53), it appears that the Archbishop's *whole* possessions were estimated at $84\frac{3}{4}$ 'knights'-fees.'

4. The Priory of Christ Church (*monachi archiepiscopi*), holding estates direct of the king by the spiritual services of francalmoigne. These lands, pending the question of the separation of their revenues, were entered in the name of the Archbishop, though not said to be held by him as his own domain (*tenet in dominio*), as were the lands which he retained for himself and his knights.

5. The Bishop of Rochester, whose estate was small. He held only twelve 'knights'-fees.' The Bishop (Gundulph) soon afterwards divided his lands with the monks of St. Andrew's Priory in Rochester, who thenceforth held their share in francalmoigne by purely spiritual service.

6. The Abbot and monks of St. Augustine, who held fifteen 'knights'-fees' by barony. The size of their possessions may be inferred from the fact that in the reign of Richard II., according to their chronicler Thorne, they had twelve thousand acres in their demesne lands alone[x].

[x] The Priory of Christchurch and the Abbey of St. Augustine were near neighbours and bitter rivals. Their registers are full of the lawsuits between the two foundations. Lambarde's account of their rivalry is very animated:—"There was in Canterbury within the time of late memory, besides others, two houses of great estimation and livelihood: the one Christchurch and the other St. Augustine's: the monks of which places were as far removed from all mutual love and society as the houses were near linked together; and therefore in this part it might well be verified of them, which was wont to be commonly said,—

'Unicum arbustum non alit duos Erithacos.

'One cherry-tree sufficeth not two jays.'"

Perambul. 298.

7. The abbot of Battle, to whom was given in barony "seven sulings" of land at Wye, and jurisdiction over twenty-two hundreds in the Lathe of Scray. The Register of Battle Abbey describes this estate thus: "Septem swolings, quæ sunt terræ septem *hidarum*," i.e. in Sussex land was measured by the hide, where a Kentish man would use the suling.

8. The Canons of St. Martin, at Dover, held twenty-four sulings in francalmoigne.

9. The (alien) Abbot of Ghent, whose house retained the "two sulings" of land at Lewisham, which had been held by it in the late reign[y].

It will be seen from these nine preceding headings how extensive were the possessions of the Church in Kent.

Many objections have from time to time been made against a passage in Sprott's Chronicle*, (a monk of St. Augustine's Abbey, whose statements cannot indeed be received with implicit belief,) which seems to imply that nearly one-half of the land in the kingdom belonged to the monks.

* Hearne's *Reliquiæ*, Sprott, 114; Lingard, i. 425.

Without entering on the general argument as to the rest of England, we may notice that according to Domesday Book, and other records of high authority, such as the Black Book of the Exchequer, out of the 278 knights'-fees into which the military lands of Kent were divided, the Church held nearly 108[z].

This does not affect at all the extensive estates of the priories holding in francalmoigne, or of the smaller religious foundations endowed in very early times by the

[y] The alien priories retained their lands in England until 2 Henry V.

[z] *Seil.* the Archbishop, 84¾; the Bishop of Rochester, 8; and the Abbey of St. Augustine, 15.

greater landowners. We now return to the laymen holding lands *in capite* by barony.

10. Richard Fitz-Gilbert, commonly called Richard of Tonbridge. His estates lay for a league everyway round his castle of Tonbridge. This was called the Leuca, League, or Lowy of Tonbridge. Much of his land was held by him as sub-tenant of Odo of Bayeux. His manors contained "thirteen sulings."

11. Hugh de Montfort, besides lands held of the Archbishop by military service, held a large estate *in capite.* Some of it is entered as waste ("one suling of waste land in Newington"), and land lately redeemed from the forest (half a denne of the manor of Tinton, in Warehorne); a good deal of it lay in Romney Marsh, and had been held by 'soc-men' before the Conquest, and therefore retained its gavelkind nature.

12. Eustace, the Earl of Boulogne. Some of the lands held in barony by him were held again of him by "grand serjeanty," in the same way as some of the manors belonging to the Archbishop. This tenure did not at first attach only to the king's person, as in later times.

13. Hamo, the reeve or sheriff of Kent, and steward of the king's household (*dapifer*). This was Hamo de Crepito Corde or Crevequer. His estate consisted of nearly twenty-two knights'-fees, according to the Black Book of the Exchequer.

14. Albert, the king's chaplain, held seven and a half sulings at Newington by Sittingbourne, which were soon afterwards given to a priory founded in that place.

It will be observed that several tenants are spoken of as holding so many "knights'-fees," and that the whole county contained 278 knights'-fees. It would be very desirable to know how much land each fee contained, but

of this we have not very definite accounts, from the nature of the case.

There are many different estimates of the contents of a knight's-fee. Some placed it at 400 acres, some as high as 1,600 acres[a].

"But a knight's-fee is properly to be esteemed according to the quality, and not according to the quantity of the land, i.e. by the value and not by the contents[*]."

[*] Co. litt. 69 a.

At first this value was £15 per annum of clear revenue, then by the statute *De Militibus*, 1 Edw. II., it was fixed at £20, and afterwards at £40.

However much in different parts of England the contents of a knight's-fee may have varied, an argument might be supported that it did not fluctuate greatly in Kent. We may remember that when a large estate was granted out in knight-service, the obligation to perform the military duties was laid upon a comparatively small portion of the whole. We know too that in Kent this portion was the demesne-land of each manor, the rest being held from the first in free gavelkind. The demesnes would naturally be

[a] "We are told," says Lingard, "on the authority of Sprott, the monk of St. Augustine's Abbey, *that four hides made an entire fee.* Yet when we come to the fees themselves we find none containing fewer than five hides, and some containing more. In the Return of Richard de Haia, we are told that knights do service for five carucates or hides of land, and that some have that number and others not."—(*Lingard, Hist.*, i. 426; *Lib. Nig. Scacc.*, 278.)

The MS. "Book of St. Mary's Church, Warwick," Brit. Mus. Add. MSS., 6032, contains the following calculation, giving 640 a. to the fee:—

"Sciendum est quod magnum feodum militis constat ex 4 hydis, et una hyda ex 4 virgatis (yardlands), et una virgata ex 4 ferndellis (farthing-deals or verndals, a Hertfordshire measure), et una ferndella ex 10 acris terræ."—(See *Blount's Glossary*, title Farthing-deal.)

For many other estimates see Co. litt., 69 b., 76 a., 83 b.; Crompt. Jurisd., 222; Selden, Titles, ii. c. 5.

the best portions of each manor, and the best lands of each district and throughout the whole county would vary in quality much less than the best and worst portions of the socage tenements alone, some of which would be little better than waste, or the "very stubborn land" of Domesday Book.

The question is not likely to be soon settled. Meanwhile, we may notice that Spelman has given in the Glossary (title Suling) an extract from a MS. belonging to the Canterbury library to this effect,—"in Kent two sulings make one knight's-fee;" and that Sprott, who assigned "four hides" as the amount of its contents, was a Kentish man, and belonged to St. Augustine's Abbey: he must therefore have been familiar in his personal experience with the measurement of the military lands (as distinct from the gavelkind) composing the fifteen knights'-fees held by that Abbey, at the time when his Chronicle was written. In later times, as we have seen, the value of the knight's-fee rose with the value of land.

The number of sulings paying land-tax at the date of Domesday Book was 1,144 and a fraction.

That this was a correct measurement we ascertain partly by the fact that in later times the lands of different manors were found by actual measurement to correspond with the estimate in this survey; e.g. the manors of Minster and Monkton in the Isle of Thanet, the deeds relating to which have been described in this chapter. Partly also that we have a list of "the sulings of Kent and the names of their tenants," which confirms the calculations of Domesday Book [b].

[b] "De Suylingis Comitatus Kanciæ et qui eas tenent. Ex valde veteri libro fide digno."—(*Cotton MSS. Claud.*, c. iv. 153 b.) The reference to this record in the printed index of the Cotton MSS. is wrongly

This record, excluding the ancient demesne of the Crown in Dartford, Aylesford, Milton, and Feversham, mentions 1,081 sulings distributed among the "tenants of Kent." It is the connecting link between the lists given in Domesday Book and that of the Black Book of the Exchequer in the reign of Henry II.[c]

Leaving now the tenants *in capite*, of whom more may be said under the head of tenure by barony, we find 212 sub-tenants by military service, whose names have been arranged by Sir H. Ellis in his Preface and Introduction to Domesday Book, to which recourse must be had when any point of difficulty arises in matters concerning the great survey.

given. In the beginning of the book is the memorandum, "this book I had from my Lord Burleigh." The list was compiled either in the end of the Conqueror's reign or in the beginning of that of William Rufus, as we see by the names of the tenants, Comes Eustachius, Hugo de Montfort, &c.

[c] In several instances the father, son, and grandson appear in these records respectively holding the same estate, e.g. Ansgot de Ros, Helto Fitz-Ansgot, and Walter Fitz-Helto, tenants of seven sulings, which appear in the Black Book as three knights'-fees and one-fifth. Being compiled after the disgrace of Odo of Bayeux, the record is useful as shewing how the estates were dispersed, which are entered under his name in Domesday Book. These are some of the entries:—

NAME.	SULINGS.	YOKES.	ACRES.	KNIGHTS'-FEES. (In Black Book.)
St. Augustine's	145	3	0	15
Archbishop and Priory	335	3	0	84¾
Bishop of Rochester	56	3	0	8
St. Martin's	24	0	132	—
Newington Priory	7	2	0	—
(Hamo) Crevequer	43	3	0	21¾
Helto (De Ros)	7	0	0	3½
Maminot	28	0	0	39

The Bishop of Rochester retained 45½ sulings out of the 56, and gave the rest to the monks of St. Andrew at Rochester. Cotton MSS. Vesp. A. 22, 69.

These sub-tenants of manors retained for themselves the demesne lands, and in Kent let out the rest in gavelkind to the *villani*, and in an inferior kind of socage to the *bordarii* and *cotarii:* from the average size of the holdings the *villani* were often called "tenants of carucates" (*carucati*), and the lower classes of freemen "tenants of yardlands" (*virgati*), and the like. Thus, as has been said before, the whole county might be regarded as divided into free tenements and socage tenements, or demesnes and tenants' land, the former of which was *ex vi termini* not gavelkind either then or later.

In the first class of freemen[d], owing definite socage service, were 6,597 persons, the original "men of gavelkind," to whom the well-known words of Hallam may be applied, "they are the root of a noble plant, the free socage tenants or yeomanry, whose independence has stamped with peculiar features both our constitution and our national character*."

* Midd. Ages, ii. 227.

To these tenants in socage we may add the burgesses, or tenants in "urban socage," whose numbers we cannot determine with accuracy. Sandwich is omitted, and Dover was at that time in ruins. In Rochester only 5, and in Fordwich 6, are mentioned, being the burgesses who paid "gavel" to the King. There were two classes of burgesses, the one of free burgage tenants, the other of immigrants

[d] Some confusion has before now arisen from a neglect of the fact that these *villani* were free socage tenants, and not serfs of the demesne. For instance, "In Domesday Survey the class villani compose 6,597 persons, the servi 1,148, and the bordarii 3,118, a total of 10,863 persons in a servile condition, for the bordarii were but one degree only more independent than the villani. One of two conclusions only remains to be adopted, either that in respect to Kent at least the Survey was erroneously composed, or that shortly after its compilation the Kentish men were emancipated from their feudal restrictions."—(*Canterbury in the Olden Time*, p. 13.)

free and servile from manors outside the walls, to which these settlers were still supposed to belong. Sir H. Ellis reckons up 661 burgesses mentioned in the Survey of Kent. It will be seen later that some of the burgesses even possessed *allodial* land, free from any service and any seignory except that of the King[e].

There were also a few socage tenants or ceorls, 44 in number, who held manors or large portions of manors on terms of far greater freedom than the ordinary yeomen. In the reign of Edward the Confessor much of the marsh land was held by this class, entries of this sort being frequent, "eleven socmen held this land (Orlestone manor)," "a certain socman held this land of King Edward," and the like. It may be remembered that a ceorl, according to the ancient English law, who acquired five hides of land of his own, became a lesser thane or gentleman; and it is reasonable to suppose that these socmen of whom we are speaking were men who had acquired freehold land of their own on better terms than any 'villanus' dependent on a lord, but not sufficient to elevate them to the rank of a lesser thane or 'dreng.'

The next class, the free husbandmen of the demesne, numbered 3,118 (*bordarii*). Below them were 364 cottagers, hardly better than tenants at will. These two classes were gradually absorbed among the free gavelkind tenants, in

[e] The remarks of Lingard on this point are not in accordance with later and better authorities. "The number of freemen in Kent amounted to 2,424, of villeins to 6,837, of bordars to 3,512. The burghers were 1,991; of these the greater part were only a privileged kind of slaves. Taking them only at 1,000, the number of freemen to that of slaves will be 4,415, to 11,349."—(*Hist.*, i. 372.)

If this were correct there would have been more copyhold in Kent than in any other county; in fact, however, the slaves, even including the semi-servile cottagers, hardly exceeded one-eleventh of the whole population.

some cases, as we have seen, on payment of a fine to the lord for the privilege. Below the cottagers ranked the 1,148 serfs, found for the most part on the estates of the Church.

A few other persons are mentioned, as four knights, three thanes, twenty-four *homines* (lesser thanes), four 'Frenchmen,' who bring the male adult population up to 12,188, excluding the burgesses omitted for various reasons[f], the members of the ecclesiastical corporations, certain "menservants and maidservants," e.g. in Ash by Wrotham, and a few lesser thanes not included in the list given below.

We could not expect to find any Kentish names among the tenants in chief, between whom the county was apportioned. But many English names appear in the second class of military tenants, probably those of the old owners of the estate under the eleven great thanes of the preceding reigns.

There is no evidence that any of the free tenants in socage were dispossessed of their holdings, except indeed those *socmanni* of the highest class, who may have been supposed to have resisted the invaders.

Probably the yeomen and the labourers were too insignificant to demand the special attention of the Conqueror,

[f] Tenants *in capite*	13
Undertenants	212
Villani	6597
Bordarii	3118
Burgesses	661
Cotarii	364
Socmen	44
Serfs	1148
Miscellaneous	31
	12,188

Sir H. Ellis, Introd. to Domesday Book.

after he had confirmed their ancient privileges and customs to them by treaty with the Kentish leaders; the seignory over them and the right to their services were transferred with the land to the new lord of each manor.

The inhabited parts of the county were divided into 1,144 sulings. Of these 38½ were ancient demesne, and the Church 562. It appears from Henshall's Summary Tables, compiled from the Survey of Kent, that the commissioners declared that there were 3,012 ploughs used in all the manors, viz. 680 on the demesne lands, and 2,332 on the socage tenements. There were often many more ploughs upon a manor than the arable land would properly support [g].

There were then the lands of 680 ploughs free demesne land at the date of the Survey to 2,332 held by the *villani* and *bordarii;* in other words, about one-third of the inhabited lands of the county were then out of gavelkind, being held of the Crown either in "ancient knight-service," or in "ancient francalmoigne." Besides the demesnes, the manors themselves, with all their appurtenances

[g] We may take the hundred of Stroud as a specimen of the proportion of demesne to socage land.

Parish.	Sulings.	Carucates in Demesne.	Carucates in Socage.	Carucates of Arable.
Halling	2½	3	6	7
Cookstone	2	2	5	6
Hennis	½	1	—	1
Chalk	3	2	5	7
Beccles	½	½	½	½
Denton	½	1	1	2
Higham	5	3	6½	12
Cliff	3½	1½	5½	6
Cliff	½	½	—	—
Cowling	1½	2	½	1½
Cowling	½	—	—	½
Frindsbury	7	5	11	15

properly belonging to the seignory, were held out of the tenure of gavelkind. Much of the land which was then uncultivated was gradually granted out in socage, and therefore is partible in descent; much, again, has remained as 'waste of the manor,' woodland, or demesnes of manors newly created and granted in knight-service; all such is descendible, if capable of identification, to the eldest son alone. In the succeeding chapters the various lawsuits and inquisitions followed by verdicts of juries impanelled to decide the tenure, will be adduced to prove in the particular instances the general rule that what was "free tenement" at the date of Domesday Book is now descendible at common law to the eldest son alone.

CHAPTER VII.

Tenure in Burgage.

Burgage Tenure.—The customs of the Saxon towns.—The Tenure still of importance.—Boroughs of different kinds.—Rural boroughs in Kent.—Borsholders.—General and special customs of Burgage.—Connection of Burgage and Gavelkind.—Borough-English.—Its origin.—Places where it prevails.—True explanation of Borough-English.—In ancient boroughs.—In copyholds.—Traces of it in the Kentish Custumal.—The custom of Merchetum.—Its real meaning.—Its extent.—Three classes of freeholders in the ancient boroughs of Kent.—Exclusion of the half-blood in Gavelkind and Burgage Tenements.—Exchanges of Burgage lands under the Enclosure Act of 8 and 9 Vict., c. 118.—Exchanges of Gavelkind land under the same Act.—Inconveniences of Borough-English.—Customs of various boroughs.—The Isle of Portland.—The Fee of Arundel.—Summary.

In close connection with the subject of gavelkind is that of burgage, or town-socage, which preserves the customs of the Saxon towns, as the other preserves the customs of the Saxon husbandmen.

Before defining the tenure, we may say a word or two on the condition of the ancient boroughs immediately before the Conquest.

In many places the municipal system derived from the Romans had been preserved through all changes unhurt. The corporation of the borough or burg might hold land as the common property of the burgesses: their tenure in general was socage or gafol-cund, and rents and services were due to the king or other lord from the corporation and from individual burgesses. They might also hold land by a superior title as *allodium*, paying nothing to any lord, but subject only to the king's jurisdiction. In this way the burgesses of Canterbury and Dover are recorded in

Domesday Book to have owned some free land, and some gavelkind land in and round the bounds of their cities. The law recognised and encouraged the boroughs: "special privileges as to inheritance were frequently enjoyed;" the member of a guild became noble by three trading voyages.

The whole borough belonged in theory of law to the king or some great thane, to whom a quit-rent was due from the guilds and the individual tenants. Their position has been compared to that of copyholders in modern times. Their tenure, free though restricted, was less irksome than that of the small rural landowners in the townships or manors of the thanes.

It was very early discovered to be for the mutual interest of the lord and the burgesses, that the separate rents and services should be changed into one perpetual rent issuing from the whole borough. This process was afterwards called "affirming the borough," or letting it to fee-farm in burgage. This had been done sometimes before the Conquest, as at Huntingdon *, and prevailed everywhere after that time. The lord of the borough, after such a confirmation or new creation of a burgage tenure, no longer held it in his demesne; the borough, like an ordinary socage tenant, owed him fealty, rent, and customary services, and for the rest might manage its own affairs. The only inconvenience which balanced these advantages was a liability to be "tallaged" or taxed at the lord's discretion, in the same manner as the cottagers on his demesnes, a tyrannous custom which lasted till far into the thirteenth century.

* Domesd., 203.

The cor[illegible] distric[illegible] rywhere divided into tythings. [illegible] eant the lands of ten free fam[illegible] a mere local division.

Each tything in a measure governed itself. The members acted as police, and were mutual bail for each other in the system known as 'frank-pledge.' Their chief was the tything-man, or, as he was also called, the head-borough, or *bors-holder*.

The word *Bors-holder*, or borough-elder, has nothing to do with the ancient boroughs, burghs, or fortified places of which we have been speaking. The word *borough* (from *borh*, a pledge) is the Kentish name for districts elsewhere called tythings.

* vol. i. 251. "The office of the bors-holder or tything-man," said Hasted*, "was to determine the smaller disputes between neighbours, and such trespasses as belonged to their farms, the greater matters being reserved for the hundred courts. Besides this, King Alfred ordained that every natural inhabitant, or Englishman born, should live in some hundred or tything, that would be bound for his appearance, to answer the law: but he that could not find such surety should abide the severity of the law, and if such offender happened to make his escape, then all that hundred or borough incurred a mulct or fine to be imposed by the king."

But this statement, according to later and more esteemed authorities, is incorrect in several ways. In the first place the *bors-holder* was never a magistrate in any way, but a petty constable, as now, wherever the office is preserved.

The leet, or view of frank-pledge, is the old hundred-court, instituted "to bring justice to every man's door." Its jurisdiction was often limited to the area of particular honours or manors, that the lord might have the profits of the court. Its criminal jurisdiction was almost taken away by Magna Charta, but it retained the duty of "viewing the frank-pledges," i.e. the freeholders within its jurisdiction, the men of the "borough," which it exercised, it is said, as late as 10 Henry VI. in Cornwall. Its other

objects were the preservation of the peace, and the punishment of minute offences; serious matters were dealt with in the County Court. Courts-leet practically do nothing now but appoint the constable, or, as he is called in Kent, the *bors-holder*.

Alfred did not set up the tything-system over England; it grew up gradually between the time of Canute and the Norman Conquest, "and the Normans completed what the Danes had begun."

The members of a tything were perpetual bail for each other. When a crime was committed, the tything had to clear themselves from any participation in the crime, or escape of the criminal; and if they could not exculpate themselves, *and* if the malefactor's estate was insufficient for the penalty, then the others were compelled to make the deficiency good. But it is incorrect to say that the society was always responsible for offences committed by its individual members.

It was the custom upon gavelkind land, "that the tenants in general were not compelled to attend the summons of the justices in eyre, but were represented by the *bors-holder* and four tenants of gavelkind in the borough," except in the towns where twelve were bound to attend.

Having now distinguished clearly between ancient boroughs in the usual sense, and the rural boroughs into which Kent is divided[a], we may return to burgage tenure.

It is defined as a kind of town-socage, where the King

[a] The division of Kent into boroughs becomes important in any search for old cases respecting the tenure of particular pieces of land in the county. The name of the borough is often given instead of that of the manor or parish.

or other person is lord of an ancient borough, in which the tenements are held by a certain rent from the whole body of burgesses.

Most of the ancient boroughs were taken by the Crown at the time of the Conquest: their names are recorded in the Exchequer *. Some few, however, were held by lords spiritual and temporal, who claimed the same rights of taxation by tallage at their discretion, as the Crown in the boroughs of the King's demesne.

* 40 Liber Assis. 27.

The tenure could only exist in *ancient* boroughs, and this is still the law:—

"In an upland town, which is neither city nor borough, the custom of gavel-kind, or borough-English, cannot be alleged. But these are customs which may be in cities or boroughs: also if lands be within a manor, fee, or seignory, the same by the custom of that manor, fee, or seignory may be of the nature of gavelkind, or borough-English †."

† Co. litt. 110 b.

That is, the *tenure* of burgage is confined to ancient boroughs, and the *tenure* of gavelkind to Kent, though there may be local *customs* of the same nature in other manors. But the customs of burgage cannot be alleged in a town which is not an ancient borough. This was settled in the reign of Edward II., when a plea was disallowed, that all the tenements within a particular town were partible, and the tenements in dispute were within that town ‡.

‡ Hil. 16. Edw. 2. Fitz. Prescr. 53.

The law on this point is well declared in the Case of *May and Bannister* v. *Street* §. This was shortly as follows.

§ Cro. Eliz. 120.

The Prior of Merton was seised of a messuage in the Archbishop's ancient borough of Southwark. In the reign of Henry VIII. both the borough and the messuage in it came separately into the hands of the King.

He gave the messuage, *together with divers lands in Essex and Middlesex*, by letters patent, to one J. S. in fee, to be held of the Crown *in free burgage* by fealty, in lieu of all other services.

Queen Mary gave the borough to the Mayor and Corporation of London, and afterwards the tenant died intestate and without heirs. The question arose, whether his real property escheated to the Crown or to the then Lords of the borough of Southwark.

It was held that the Crown was entitled, the tenure all along having been ordinary socage; the words of the letters patent, "in libero burgagio," were rejected as void from the beginning, for the lands *outside the borough* could not be given by the King to hold *in burgage*. Neither would the Court recognise two separate tenures for the messuage and for these lands, when the King had only mentioned one. "Therefore of necessity it was a tenure in socage of the Crown."

The tenures of burgage and gavelkind are essentially local; they cannot be created out of the ancient boroughs and the bounds of Kent; nor can any customs, whether borough-English, partition in descent, or anything else, be newly imposed upon land by any royal grant, "For customs receiving their perfection from the continuance of time, come not within the compass of the King's prerogative*."

* Coke's Copyholder, sect. 31.

It would be as reasonable to think that ancient demesne could be created at this day by the like authority (i.e. that lands can now be impressed with the qualities only to be gained by having been Crown-land at the Conquest), as to think that these local tenures can be transplanted.

Yet the possibility of such an artificial creation of tenures has been maintained upon a forced construction

of the Enclosure Act of 8 and 9 Vict. c. 118, §§. 94, 147, by which it was provided that lands, exchanged under the powers of the Act, shall each take the tenure of the other, and be clothed with the same uses, trusts, intents and purposes, and be subject to the same conditions, charges, and incumbrances, to which the other lands were subject before the exchange. A case was put by the Master of the Rolls [b] of two owners of large estates, the one in Kent, the other in Middlesex, and he supposed that each might possess a small plot of ground in the centre of the other's land, a plot of great value to the owner of the surrounding property, but worth nothing to any one else. It is evident that an exchange under the Act would be a material benefit, and it is also evident that it would be convenient for each to hold all his land by one tenure. But if the exchange necessitated transferring the tenure, customs, and nature of each piece of land to the other, the Kentish estate might gain a piece of common socage, and the Middlesex estate an inconvenient piece of gavelkind.

"If the powers of the Commissioners extended to the exchange of tenures, the greatest inconveniences would occur: such inoculations of tenure would be most objectionable *."

* *Minet* v. *Leman.*

The writer has also known a case where land in Cumberland was exchanged for gavelkind land in Kent, and where the same claim was put forward, viz. that the land in Cumberland had been summarily imbued with all the qualities of ancient gavelkind. Of course, the claim shewed an ignorance of what gavelkind really is; it was evidently regarded as a mere custom, which it was hoped could be transplanted.

Such inoculations are, however, not merely inconvenient, but impossible. Burgage, gavelkind, and ancient demesne,

[b] In *Minet* v. *Leman*, L. J., New Series, 24, Ch. 547.

are tenures which derive their qualities not from persons, but from the land; these qualities are inherent in the particular piece of ground. As was said by Ch. J. Mountague of gavelkind given out in knight-service, "the custom remains, for it runs with the land and is by reason of it." And the same was said by Shelley, J. in *De Beggbrooke's Case*, 26 Hen. VIII. 4.

There are some limits even to the power of an Act of Parliament. A tenure or a custom, which only exists because from time immemorial it has grown in a particular spot, can be destroyed, but not removed, and certainly no imitation of it would be created in another place by implication from the wording of a clause in an Enclosure Act.

Freehold tenements in burgage, gavelkind, and ancient demesne, are all held in socage, modified variously by local customs. Each party to such an exchange under the Act, as has been described, will continue to hold by his old tenure (socage), but by a different variety of it.

The same fallacy of imagining that the varieties of socage are something quite distinct from the common tenure, the *genus* of which they are the *species*, was involved in a claim made in *Hougham* v. *Sandys*, 6 L. J. Chy. 67.

In this case the heirs to some gavelkind land had concurred in its sale, but they insisted that the fund remained impressed with the character of real property, and having been produced in part by a sale of gavelkind and, *a proportional part of it ought to be considered as bearing the character of gavelkind*, and therefore that such part should follow the customary mode of descent to all the males equally.

This claim was properly rejected as fanciful; the cus-

tomary qualities were local and inherent in the land, by that time in another ownership; if the fund descended as real property, it would follow the rules of descent in common socage, not of the local varieties of the general tenure.

It was said above that inoculations of tenure by means of the Enclosure Act would be highly inconvenient in many instances; but this would not be quite a sufficient argument against the practice. In many other instances it would be of the highest convenience, if it were only possible according to the general law of tenures. A case is given in the Appendix from the Second Report of the Real Property Commissioners, where a most important sale was upset, and the greatest loss sustained, by finding that a small plot of land in the middle of an estate was held according to the custom of borough-English, the customary heir being still an infant; and the same sort of thing has frequently occurred in Kent with gavelkind lands. These inconveniences could be promptly remedied by shifting the obnoxious custom to some other piece of land under the Enclosure Act, if the doctrine laid down in *Minet* v. *Leman* were incorrect.

The most important places (in Kent) where burgage tenure has existed from ancient times, are Canterbury and Rochester.

Until A.D. 1234 Canterbury was part of the royal demesne, governed by the King's bailiffs, who accounted for the rents due from individual citizens to him, and for other profits. But in 18 Hen. III. the city was granted in fee-farm to the citizens for a fixed annual rent, and from that time the tenure was free burgage.

Before this time the six aldermanries of the city had been held by serjeanty of the Crown as freeholds of in-

heritance, and when the tenure was converted into burgage they were held in like manner of the "commonalty of Canterbury," until they were bought up by the city.

But all the messuages and tenements in Canterbury were not anciently held in socage. We are told in Domesday Book, that Ralf de Columbers held eighty acres of the *allodial land* of the burgesses, and in another place that he held thirty-three acres of the lands of the Corporation, besides their forty-five "manses," or plots of ground, which paid gavelkind rents. In another place we read of "twenty-four acres of the *allodium* of the burgesses [c]."

In a charter, granting a parcel of land without the walls "between Queningate and Burgate" to the monks of Christ Church, these words occur:—

"And I will that the monks hold that land *altogether free*, as I and my ancestors have done, and answer for it to no lord [d]."

And in the twelfth century two messuages in the city were granted by the hereditary Alderman of Ridingate Ward to St. Laurence's Hospital in free alms, by the description of "those two messuages which are situated in that book-land (i.e. thane-land as opposed to gavelkind) for which I answer to no lord." These passages shew that some parts of Canterbury have not been gavelkind from time immemorial, and this is also the conclusion of Somner, who says:—

"I have often much wondered with myself whence it should come to pass, that divers of our Canterbury houses and ground at this day pay no quit-rent at all, which others in the same place, though holden in free burgage, are known to do. But considering afterwards with myself, that *bookland* often occurs in *landbooks*

[c] Archives of St. Augustine's, quoted by Somner, p. 122.
[d] Somner, from the Archives of the Cathedral.

[title-deeds] of the place in the Saxons' time, I at length concluded, at least conceived, such houses and grounds to be the remains of our ancient *bocland*, which seemeth to be still surviving in them, as if holden in *allodio, pleno jure*, without all manner of chargeable service, and no other probably than part of those eighty acres of land in Canterbury's Survey in Domesday Book thus expressed:—'Habet etiam quater viginti acras terræ super hæc quas tenebant Burgenses in Allodio de Rege.'"

The absence of quit-rents upon particular lands throughout Kent is a most useful piece of evidence that the tenure was never gavelkind, for all ancient socage in Kent was liable to gavel, i.e. rents, or services since commuted for payments in money.

The city of Rochester was also in the King's hands at the Conquest, and the citizens paid their gavel or tribute separately to the provost or bailiff. But in the reign of Henry I. it was leased for twenty pounds yearly to the citizens during the King's will, and in 12 Hen. II. it was finally granted to them in fee-farm to hold by burgage tenure.

The customs of burgage are both numerous and various in different places. The most important body of them is "the Custom of London" which is confirmed by a special statute. The most important single custom is that of borough-English, especially to persons enquiring into the law of gavelkind. A short account of the origin and extent of this custom will not be out of place here.

Borough-English, or the custom of the English towns, is so called in opposition to the law of descent prevailing in towns settled by the Normans. Thus the town of Nottingham was divided into the English borough to the east, and the French borough to the west: in the one, real property descended to the youngest son, by a custom of

burgh-Engloyes, or borough-English; in the other, to the eldest, by what they called *burgh-Françoyes*, i. e. the law introduced after the Conquest.

The custom of borough-English prevails in several cities and ancient boroughs, and districts of smaller or larger extent adjoining to them, in different parts of the kingdom. The land is held in socage, but according to custom it descends to the youngest son, in exclusion of all the other children of the person dying seised. In some places, this peculiar rule of descent is confined to the case of children; in others, the custom extends to brothers, and other male collaterals. "The custom of borough-English also governs the descent of copyhold land in various manors [e]."

Several conjectures have been made as to the origin of borough-English. Some have traced it to the Celts; Blackstone claimed it for the Tartars; and many more have derived it from the barbarous old custom of *Merchetum*, known, it is said, to the feudal laws of other countries, but not proved to have existed in England in any particularly gross form. *Merchetum*, in England, was a fine paid (in general) by a villein on the marriage of his daughter, but it is often used in the sense of money paid to commute the lord's theoretical rights over the wives of his servile tenants. Probably any form of argument would have seemed good to those who wished to exact a fine from a serf, but in reality the custom of *merchetum* was not so bad as it has been described*. The custom of borough-English is *not* found particularly in places where *merchetum* was used, but principally in the king's ancient boroughs, as we have seen.

* 3 Mod. Rep. Preface.

A few sentences about this *Droit de Marquette*, or *mer-*

[e] Third Real Property Report, p. 8.

chetum, will shew at once how common and how harmless it was in its English form. It was a customary payment made by villeins on the marriage of their daughters, &c., and depended on the theory that the lord of the manor had a right to the services of all persons born on his land, and ought to be recompensed for the loss of their possible services. It could not be required of a free man *as such*, i.e. unless he held tenements in villeinage *.

* Co. litt. 117 b; Bract. ii. 26.

A notice, however, in the register of the Abbey of Burg, in the Cottonian collection, shews that sometimes it was exacted from tenants in socage: "Marchetum est quod Sokemanni et Nativi debent solvere pro filiabus deploratis sive corruptis." The fine in this case paid by tenants in socage is probably of a different origin to that paid by the serfs, though a common name had come to be applied to both.

In the pleas of the King's Court, *temp.* Hen. III., it is noted that "M. held his land by villein-services, viz. by the service of paying 18^{d}. yearly, and a fine (*merchetum*) for the marriage of his daughter or sister at the discretion of the Abbot of Abingdon."

Trin. 18 Edw. I. *Coram Rege*, r. 12, it is said "T. de R. is the villein of one Folliot, wherefore the latter can tallage (tax) him high or low (*de alto et basso*) and he must pay a fine of *merchetum* for his flesh and blood," i. e. for the marriage of his daughters.

The same fine was paid in the manor of Aulton, by Southampton, by any villein on the marriage of his daughter, *or the sale of his horse* †.

† 14 Joh. rot. 1, 85.

Not to multiply examples at length, the *merchetum* was paid for daughters in several Welsh counties (it is said that the word *merchetum* is Celtic), in Eccles and Gressenhale (Norfolk), Morton, Thurgarton, and Rempton

in Nottinghamshire, in Shrewsbury, and many other places.

It is curious that in Nottingham, where borough-English was the custom of the "English town[f]," this custom of *merchetum* was also prevalent. It is tolerably clear, however, that the one was not derived from the other.

We shall therefore dismiss the idea that descent in borough-English has anything to do with these marriage-fines paid by certain serfs. For the true explanation of its origin we must remember the state of the inferior orders of society at the time of the Conquest. Borough-English obtains both in freehold burgage, and in copyhold, customary freehold, &c. The reason for its presence in free boroughs is given by Glanvil*, and Litt.†, viz. "this custom stands with some certain reason, because that the youngest son, if he lack father and mother, because of his younger age, may least of all his brethren help himself," and therefore the policy of the law "prudently directed the descent of the real estate, *generally little more than the father's house*, where it was most wanted‡." This prudent regulation was tempered, in order to meet all cases, with the free power of testamentary disposition, so that when the *reason* for its application did not exist, the custom had no need of being applied. This custom in burgage freeholds was not altered at the Norman Conquest (probably because the Norman barons, as a rule, did not live in towns), and has remained unaltered to our own time.

* lib. vii. c. 3.
† §. 211.
‡ Robinson, Appendix.

In the lands held by serfs of the demesne at the will of the lord, who gradually emerged into the light of freedom as copyholders, it is easy to imagine how the old traditions

[f] The distinction between the *Burgh-Engloyes* and the *Burgh-Françoyes*, the east and west portions of Nottingham, was, it is said, kept up as late as A.D. 1713.

of the law were cherished and acted upon, while the lords would naturally be indifferent to the practices of the serfs, until it was too late to change what had become the custom of the manor.

Where the real property consisted, as a rule, only of a cottage and a slip of ground, it would probably be given to the youngest son; where it was more valuable, a custom of partible descent would with equal propriety prevail. A curious exemplification of this is noticed in evidence given to the Real Property Commissioners *, where it was said that there are several manors near London, where it is still the custom "for the land to descend to the youngest, if it is under a partible value, say £5; but if it is worth more, it is parted amongst all the sons."

* Rep. I. p. 254, Mr. Humphrey's Evidence.

Another cause tended to perpetuate these customs. It was always the merciful policy of the law to allow freedom to any slave who could prove that he had lived in a borough, paying his proper dues, for a year; a provision which would evidently keep alive among the rural villeins the habit of using the old law, still living in the free boroughs. Thus, when the serf had been at last enfranchised, it was found that the old usages had been preserved, although (as was natural) in many cases they had become altered, and, as it were, distorted from the likeness of the original free tenure. In this way we may account both for the existence of copyhold customs, similar to those of burgage and gavelkind, and for their special varieties in different parts of the kingdom [5].

[5] Robinson (Appendix) explains the existence of borough-English in copyholds thus: "In copyhold manors the demesnes were generally divided among the tenants in very small parcels, (as they still remain to this day,) and were holden on arbitrary fines, large rents, and hard services: insomuch that these estates at that time were little more bene-

There is now no difference between the law of borough-English in copyholds and in freeholds[h], except that any variation from the general rule of descent to the youngest son must be specially pleaded.

Besides the custom of borough-English proper[i], or the

ficial than leases at rack-rents; and the tenants themselves being men of the meanest sort and condition, below the hopes of breeding their sons gentlemen, the elder part of their family, at a proper age, either applied themselves to husbandry, or in those manors, where all the demesnes were not already parcelled out, might obtain estates on the same hard terms; and the small advantnge of the father's tenement was left to descend to the youngest son, the only, though a mean support of his infancy."

[h] *Reeve* v. *Malster*, Cro. Car. 411.

[i] Besides the ancient boroughs which are the proper home of borough-English, as Gloucester, Nottingham, &c., it remains in the copyholds of various manors.

"It appears by communications from the stewards, that in the following manors lands are descendible after the manor of borough-English:—

St. John of Jerusalem	Middlesex.
Sutton Court	,,
Weston Grimshall, in Albury	Surrey.
Colley, in Reigate	,,
Sutton, near Woking	,,
Little Bookham	,,
Wotton	,,
Abinger	,,
Paddington	,,
Paddington Pembroke	,,
Grimshall Towerhill	,,
Grimshall Netley	,,
Shere Vachery and Cranley	,,
Shere Eborum	,,
Dunsford [in Wandsworth]	,,
Compton Westbury	,,
Brockham	,,
Boxsted Hill	Essex.
Battle, freeholds and copyholds in	Sussex.
Robertsbridge	,,
Somersham, and the copyholds in its soke or liberty	Huntingdonshire.

descent of all the real estate to the youngest son, there are many special customs of the same nature in different parts of England, to which in common parlance the general name is applied, in the same way as every custom of partition is loosely called gavelkind.

Some of these special customs are collected in the Appendix to Robinson's "Gavelkind." Such are those which limit the general custom, e.g. (1.) in a Cornish manor that lands held in fee simple shall descend to the youngest, lands in fee tail to the eldest son.

(2.) "In our books," says Coke, "there is a special kind of borough-English, as it shall descend to the younger son, if he be not of the half-blood; and if he be, then to the eldest son. (32 Edw. III. Age 81 *.)"

* Co. litt. 140 b.

(3.) In certain places the custom is restrained to lands of which the father *died seised.* And this custom is taken very strictly. In the case of *Fane* v. *Barr* †, this usage existed on certain copyhold land; a surrender was made to the use of A. and his heirs; A. died before admittance, and the *eldest* son inherited the land, the custom requiring seisin and dying seised, before it could operate. "The Court said it would have been different had this land been found to be of the custom of borough-English proper, or gavelkind." Subsequent cases have confirmed the rule,

† Robins. 129.

Alconbury	Huntingdonshire.
Weston	,,

(*Note by Mr. Wilson, editor of Third Edition of Robinson's "Gavelkind."*)

To this list we may add the manors of

South Burstead . . .	Essex.
Middleburgh	Sussex
Part of Brighton . . .	,,
Town-hill	Hants.

And several others mentioned in the text, where special varieties of the custom exist.

that where the tenant of land held by such a custom does not die seised, the heir according to the common law will be entitled [k].

And since the New Inheritance Act has deprived the words "dying last seised" of much of their previous importance in descents according to the common law, yet they are not construed with any less strictness in interpreting a custom of the kind described [l].

In other parts there are customs more extensive than borough-English proper. As (1.) that the youngest brother shall inherit in default of sons, in the manors of Dorking, Milton, and Westcott, in Surrey, and elsewhere.

(2.) That the custom shall extend to all male collaterals, as in Ealing, Isleworth, and Acton, manors in Middlesex. In the Case of *Muggleton* v. *Barnett*, cited above, the custom of the manor was "that the land descended to the youngest son of the person *last seised*, if he had more than one; and if no son, to the daughters as parceners; and if no sons or daughters, then to the youngest brother of the person last seised, and to the youngest son of such youngest brother."

(3.) Another custom has been mentioned above in this chapter as existing in some of the manors round London, that real property under the value of £5 descends to the youngest son, and all above that value to the sons equally, as in gavelkind.

(4.) In other manors near London, as Fulham, Putney, Sheen, Mortlake, Battersea, Roehampton, Wimbledon,

[k] *Reeve* v. *Malster*, Cro. Car. 410; *Clements* v. *Scudamore*, 6 Mod. 122; *Newton* v. *Shafto*, 1 Lev. 172; *Payne* v. *Barker*, O. Bridg. 18; *Rider* v. *Wood*, 1 Kay and J. 644.

[l] *Muggleton* v. *Barnett*, 1 H. and N. 282, 2 H. and N. 653; 4 Jurist. N. S. 1, 5, 56. See Appendix A. to Williams' Real Property.

Wandsworth, Down, Barnes, Richmond[m], the customary descent is extended to females as well as males, lineal and collateral. This agrees with the saying of Coke*, viz. "In the manor of B. in Berkshire is such a custom, that if a man have divers daughters and no son, and dies, the eldest daughter shall only inherit; and if he have no daughters, but sisters, the eldest sister by the custom shall inherit, and *sometimes the youngest*[n]."

* Co. litt. 140 b.

It was once said that the custom of borough-English prevailed over the copyholds in the parish of *Elham* in Kent, "So that the youngest son should inherit all the lands and tenements which his father had within the borough," &c. But Hasted, who enquired into the matter, could not find any of these lands, and says†, "On the contrary, the custom is to give the whole estate to the *eldest* son, who pays to the younger ones their proportions of it, as valued by the homage of the manor, in money."

† Vol. viii. 97.

There are several reasons for the rarity of borough-English in Kent. It exists on some copyhold lands[o], but there are few copyholds in the county, and they are usually dealt with as nearly as possible by the law of gavelkind.

In Canterbury and Rochester, before their free burgage tenure had been created, all that was anciently socage was gavelkind, and was dealt with by the light of the Kentish customs. The two tenures of burgage and gavelkind differ hardly at all in nature, and their principal customs differ

[m] And in Southwell (Notts.) and Much Hadham (Herefordshire). The list was collected by Mr. Sawkins in the last century, and printed by Mr. Wilson in the third edition of Robinson's treatise.

[n] Comp. *Newton* v. *Shafto*, 1 Lev. 162, 1 Sid. 267.

[o] *Preston* v. *Jervis*, 1 Vern. 325.

nothing in construction, but only in the quantity of land taken by the heir[p].

A careful consideration of a curious passage in the Custumal of Kent will shew that these customs are closely connected, and that in practice by the law of Kent the youngest son of a burgess would anciently inherit his father's tenement. The practice described in the following passages has for some time been obsolete, but its history throws some light on the real nature both of borough-English and gavelkind.

The words of the Custumal are these[q]:—

"If any tenant in gavelkind die, having inherited gavelkind lands and tenements, let all his sons divide that heritage equally. And if there is no male heir, let the partition be made among the females in the same way as among brothers. And let the *Messuage*[r] also be divided among them, but the *Astre*[s] shall belong to the youngest son (the others receiving an equivalent in money)

[p] *Clements* v. *Scudamore.* Salk. 243; Raym. 1,024.

[q] "Si ascun tenant en gauylekende murt, et seit inherite de terres e de tenemenz in gauylekende, que touz ses fitz partent cel heritage per ouele porcioun. Et si nul heir madle ne seit, la particion feit entre les females sicome entre les freres. Et la messuage[p] seit autreci entre eux departi mes le astre[q] demorra al pune, et la value de ceo livre a chescun des parceners de cel heritage a xl. pes de cel astre, si le tenement le peut suffrir. Et donkz le eyne eit la primere election, e les autres apres per degree."

[r] *Messuage.* When opposed to *domus*, as here, messuage includes house, orchard, garden, and curtilage. (Co. litt. 5 a, 56 a, b; *contrà*, as to the garden, Keilw. 57, and other authorities cited in Harg., n. to Co. litt. 5, a.) So that the residue of the tenement, after giving forty feet round the fireplace to the youngest, may often have been considerable.

[s] *Astre*, the hearth-place, a word often used, as here, to denote the house. *Astre* and *Messuage* are opposed, as *domus* and *messuagium*. An heir set up in a house of his own in his father's lifetime is called *Heres Astrarius* by Bracton, ii. 85; Co. litt. 8 b; *Liber Assisarum*, 23. Lambarde notices the use of *astre* in this sense in Shropshire, (Peramb. 563).

and as far as forty feet round that *Astre* (hearth), if the size of the heritage will allow it.

"And then[t] let the eldest have the first choice of the portions, and the others afterwards in their order."

In other words the youngest parcener kept the principal house of the homestead, forty feet on every side of the chief fire-place. While this was the customary mode of procedure there could be no need of borough-English, for the youngest would by it get all the real property likely to be owned by a burgess in Canterbury or Rochester. And in the same way "the small advantage of the father's cottage" was secured to the son who would probably need it most.

There is a parallel to this system of division in the Common Law, where female parceners inherit property which may not be divided. Such were castles used for the defence of the realm *, homage, and fealty, estovers appendant to a freehold, pensions or corodies uncertain granted to one and his heirs, common of piscary (uncertain), common of turbary, common of pasture *sans nombre*, &c.[u]

* Bract. ii. 76; Co. litt. 165 a.

In all these cases the *eldest* co-parcener took the indivisible inheritance, making a contribution in money to the others, as the *youngest* co-parcener in gavelkind made in respect of his borough-English privilege.

[t] "And *then* let the eldest," &c., i. e. and not till then. "The eldest son or daughter had by the custom a pre-eminence of election, and the youngest son or daughter a preferment in the partition. But at this day there is no regard of either in making the partition, only consideration is had that the parts be equal and indifferent."—(*Lambarde, Peramb.*, 562.)

[u] *Lord Huntingdon* v. *Lord Mountjoy*, Co. litt., 164 b; Godb. 17, 1, and 307.

But houses and castles not used in the defence of the realm, were divided room by room among female co-parceners: and in the same way all houses or cottages included in the homestead, in the case of a gavelkind descent, *except always the chief dwelling-house*, were divided equally foot by foot; though even in this case the youngest obtained a sort of pre-eminence, in being allowed for his share *the principal sitting-room where the fire-place was*, making contribution as before.

"In like manner of (other) houses which shall be found within such a homestead, let them be divided equally among the heirs, *scil.* foot by foot, if need be, except the 'cover of the hearth' (the principal fire-place) which remains to the youngest, as was said before; nevertheless let the youngest make reasonable amends to his co-parceners for their share, by the award of good men [x]."

Another similarity between the two tenures lies in their ancient usages respecting brothers of the half-blood, who in neither case could succeed to each other. This was specially noticed as an inconvenience of borough-English in evidence before the Real Property Commissioners *, when it was said "that if the youngest son by a second or subsequent wife should take, the eldest son by a former wife would afterwards be excluded from the succession; which seems to be a great anomaly altogether." And Robinson † has collected several cases to shew that this was the rule in gavelkind, although it is evident by considering the lateness of the introduction of the exclusion

* 1 Rep 351.

† Bk. i. c. 6.

[x] "Ensement de mesons que seront trouves en tieus messuages, seient departye entre les heires per ouele porcioun, ceo est a savoir, per peies sil est mistier, sauve le covert del Astre, que remeynt al pune, ou al punee, si come il est avan dist, issi que nequedont que le pune face resonable gre a ses parceners de la partye que a eux appent, per agard (award) de bone gentz."

of the half-blood, that it could not have been the usage before the Conquest, either in boroughs or gavelkind lands[y]. A woman, having issue by two husbands, died seised of lands near Canterbury, which were parted among her sons; one of them died, and his sisters of the whole blood were allowed to take in exclusion of his brother of the half-blood[z].

In another case, a man married twice, having issue by the first wife a son, and by the second another son and a daughter: the sons divided the inheritance, and on the death of the younger his sister claimed as of the whole blood to exclude the elder, which was allowed[a]. And in *Bishop* v. *Herberdefield* *, where a man had issue a son and a daughter by his first wife, and a son by his second, and died, and the sons divided his land, on the death of the elder son the daughter took his share instead of the brother †.

* *It. Kanc.* 3 Edw. II.

† Rob. Gav. 134, 137.

These examples will suffice to shew the similarity of the usage in both tenures. They are now both included in the operation of the New Inheritance Act, 3 and 4 Will. IV. c. 106, so that there is now no exclusion of the half-blood, and no *immediate* descent between brothers. Similar cases to those last cited would therefore be decided in a different manner at the present day, unless where there is a special custom, which requires a strict construction.

[y] The exclusion of the half-blood, now abolished as founded upon imperfect reasoning and contrary to natural justice, was peculiar to the law of England. It was founded on the feudal maxim that the heir must be of the blood of the purchaser. It was not known in its full extent to our early authorities, Bracton, Fleta, Fortescue, &c., and its chief rigour is comparatively a late invention. (Steph. Blackst. i. 415—421.)

[z] *Kingston* v. *Culhill*, *It. Kanc.*, 55 Hen. III. 6; Mich. 11 Hen. VIII. B. R.; *Bedyll* v. *Crowther*.

[a] *Horne* v. *Fresinghey*, *It. Kanc.*, 6 Edw. II. 18.

A custom of borough-English, like those of gavelkind, must have existed from time immemorial. "Novel ville ne poet aver custome *." * 21 Hen. VI. 36.

Unity of possession by the superior lord will not extinguish these customs †. Neither will a change of tenure destroy them, e.g. the manor of Sherfield was converted into a serjeanty by Edw. II., but the land retained its quality of descending to the youngest [b]. † 94 Hen. VI. 2.

A rent-service from borough-English or gavelkind lands will descend to the eldest son of the lord, to whose demesnes it is appendant, but will follow the customary course in any other hands [c].

If a fair or market be held on borough-English or gavelkind land, all profits which come from the soil, as stallage, pickage, &c., follow the custom, but all other profits go to the heir at common law [d].

Lands in an ancient borough, which are shewn by Domesday Book to have been held *allodially* by the burgesses, as at Canterbury in the instances quoted above, will not be subject to any socage customs. Such are the lands of Dover Priory, which were granted to the monks in francalmoigne long before the Conquest.

It has often been proposed to do away with the borough-English descents, both of burgage and copyhold lands, and there is no doubt that many inconveniences result from them, while the reason for their introduction in favour of the tradesmen in ancient boroughs, &c., is no longer applicable. Among these inconveniences are principally (1.) that 'the youngest son is often a minor when the

[b] *Moulin* v. *Dallison*, 3 Cro. 484; *De Beggbrook's Case*, 26 Hen. VIII. 4; 14 Hen. IV. 9; 11 Hen. VII. 25; Keilw. 80.

[c] *Randall* v. *Jenkins*, 1 Mod. 96; *Stokes* v. *Verrier*, 3 Keb. 292.

[d] *Heddey* v. *Wellhouse*, Moor, 474; Rob. 99.

father dies: during the minority the land is unalienable and often mismanaged; in case also of a trust estate in borough-English lands, a reference to the Court of Chancery is often rendered necessary.' (2.) It is difficult to ascertain the limits of the land covered by the custom, and (3.) it is sometimes difficult to prove the extent of the custom clearly enough to satisfy a purchaser. (4.) There is a great deal of ignorance, and a great likelihood of forgetfulness, of what lands are subject to it; so that 'in many cases, quite contrary to the intention, an estate settled as an entire estate has descended to different persons, the freehold to the eldest son, and the copyholds to the customary heir in borough-English[e].' (5.) From minority, addition to the number of trustees or *cestuis que trustent* on the same property, and uncertainty respecting boundaries, entries on court rolls, &c., property on which a custom of borough-English is found, whether freehold or copyhold, is often rendered very difficult to sell, or manage in any way[f].

[e] First Real Prop. Rep. 286.

[f] The following instance of its inconvenience was given by J. Humphreys, Esq., before the Real Property Commissioners:—"An instance came within my knowledge in the course of practice, and is now generally known among the profession: a client of mine bought the Town-hill estate, in Hampshire, from the trustees, which Middleton's will directed to be sold. Afterwards, in searching an old box for some missing title-deeds, they found a revocation of this will; but the eldest son, being an honourable man, said that he would confirm the estate as heir-at-law. The purchase was completed, and all went on well till we came to the middle of the estate, when we found some twenty or thirty acres of borough-English, most important from their situation; the youngest son was only twelve years of age; there was nothing to be done; it was locked up; sub-sales by the purchaser were thrown back upon his hands, with other mischief of every description. These instances are more or less frequent, as the custom or similar ones occur. In some counties, such as Worcestershire, the tenures are numerous, and the intermixture of lands held under them often minute."—(1*st Rep.*, App. 254.)

There are other customs in ancient boroughs, besides the "general custom" of borough-English; they are not, however, noticed by the law without being specially pleaded *.

* *Clements* v. *Scudamore.*

Such was the custom of devising all the lands and tenements of which the owner had the fee simple. This was of the highest importance both in burgage and gavelkind lands, before the Wills Act of 32 Hen. VIII. was passed. The custom extended to rents, if they had existed from time immemorial, and even to newly created rents-charge [g]. These cases established the rule that the rent is part of the land and issues out of the land: "The rent is of the same nature as the land, and the bowels of it [h]." In the same way, where there was a custom to devise ancient-demesne lands, it was allowed to devise a rent-charge, for it was as much ancient-demesne and devisable as the land out of which it was drawn [i].

In London, Canterbury, and some other boroughs, the citizens had a custom of devising their freeholds within the liberties of the city. The wives of citizens of Canterbury enjoyed the same privileges. By such customs a man might devise to his wife, or in mortmain, in opposition to the ordinary rules of law.

In some boroughs the widow has all the tenements of her husband instead of her third; in others she takes a moiety during her life and widowhood, as in gavelkind.

It would be impossible to mention all the special customs usual in burgage tenements. The customs of London as to trade, wives, widows, children, guardians, &c., are

[g] *Randall* v. *Jenkins*, 1 Mod. 96, 2 Lev. 87, 3 Keb. 214; *Stokes* v. *Verrier*, 3 Keb. 292, 1 Mod. 112.

[h] *Zouch's Case*, 22 Assis. 78.

[i] *Randall* v. *Writtle*, 3 Keb. 216.

both intricate and numerous. These last rest not on usage only, but have been confirmed by statute.

The rule, that an infant in gavelkind is of full age at fifteen, has often been assigned as a reason for abolishing the tenure: but in many ancient boroughs there were far 'more unreasonable customs *.' We are told by the year-book 11 Hen. IV. 29, that a custom of some boroughs allowed the infant to aliene as soon as he could measure a yard of cloth, and that the judges construed it very strictly. In others, the infant was of full age when he could tell money, measure cloth, and the like †. But these extravagant customs were disallowed in Hereford 6 Edw. III., in Gloucester 13 Edw. III., and in Ipswich 19 Edw. II., for a custom must be reasonable.

* Robinson, lib. ii. c. 8.

† Bract. vii. c. 37.

In 53 Hen. III., the jury on an inquisition *post mortem* found that "the heir of the said John Gervase was of full age *on the day of his birth*, according to the use and custom of the town of Bridport (Dorset) [k]."

Here we may leave the law of burgage tenements, of which much remains unmentioned: it is necessary to study it to some extent, before the law relating to gavelkind can be understood, the customs of the two tenures being closely connected together in their origin and in their modern interpretation, as we have seen.

[k] Esch. Roll, 53 Hen. III. 16.

CHAPTER VIII.

Ancient Demesne.

Account of the tenure.—Customary Freeholders.—*Terra Regis* of Kent.—Manors of *AYLESFORD, PULLENS, DARTFORD.*—Case of *Gouge* v. *Woodin.*—Descent of Rents-service.—*WILMINGTON, FAVERSHAM, MILTON, MILSTED, NEWINGTON.*—Court of Ancient Demesne.—*BOKINGFOLD, GILLINGHAM.*—The Weald of Kent.—Customs and Services of Tenants in the Weald.

ANCIENT demesne is a variety of socage tenure found in those manors which are recorded in Domesday Book to have been in the hands of Edward the Confessor and William the Conqueror. For the existence of the tenure it is necessary that the manor should be exactly described in Domesday Book under the heading *Terra Regis*[a].

[a] It must be entered as *Terra Regis*. In the Year-book, 40 Edw. III. 45, there is a case where the tenure was disallowed, the manor being entered as *Terra Episcopi*. So in *Saunders* v. *Welsh*, 1 Salk. 57, the manor of Otterbury was decided not to be ancient demesne. Edward the Confessor had aliened it, and the Domesday commissioners described it as private property.

The subordinate manor of Halgell, or Hawley, in the parish of Sutton-at-Hone, in Kent, has been called ancient demesne, but wrongly. It is mentioned in Domesday Book to have been "reeve-land," i.e. held by the sheriff in virtue of his office, and to have remained in the king's occupation afterwards. The jury affirmed that it had been part of the manor of Dartford, which is ancient demesne, but when the Survey was compiled it was in the hands of Odo of Bayeux, then Earl of Kent. (Hasted, ii. 353, 354.)

Hale describes the old manner of consulting Domesday Book, Common Law, c. 5, note, "Issue taken whether the manor of Long Hope, in Gloucestershire, were ancient demesne: and Domesday Book was brought into court by a *certiorari* out of Chancery directed to the treasurer and chamberlain of the Exchequer, and sent by *mittimus* into the Common Pleas." It appeared that Hope was ancient demesne, but nothing was

These manors were in ancient times managed for the king by his bailiffs, who retained for him the demesnes, and granted out the rest in freeholds to the socage tenants who paid rent in money, labour, or kind. "The King" (said Coke) "had houses of husbandry on his demesnes, and stocks for the provision of his house, and his tenants there by their tenure ought to manure, till, reap corn, &c., on the land, and therefore they ought to have many privileges *."

* 2 Inst. 542; Law Tracts, 225.

We must remember that this tenure was always a species of socage, but the manors themselves were not held in socage either by the successive kings or their grantees, having in general been held by services of chivalry, until the abolition of feudal tenures.

It follows, therefore, that the manors themselves and the demesne lands with the rents-service, advowsons, and other appurtenances, were not held in ancient demesne, but were "frank-fee," or freehold at common law † [b].

† F. N. B. 16; Somn. Gav. 56; Cowell, Interp.

It follows that the waste lands of the manor, which are in fact part of the demesnes left uncultivated for the convenience of the freehold tenants requiring common of pasture, are also "frank-fee." The wastes and common

said of Long Hope, and the tenure was not allowed. See also *Griffin* v. *Palmer*, 1 Brownl. 43; *Newton* v. *Shaftoe*, 2 Keb. 158; *Crowther* v. *Oldfield*, 1 Salk. 364; *Hodges* v. *Hodges*, 1 Lev. 106; Scrivens on Copyh. 581.

[b] "In ejectment defendant pleaded, that the lands were parcel of the manor of Bray, and that the manor was ancient demesne (*antiquum dominicum*) held of the Crown. And this was held naught, *per totam curiam:* for hereby it must be understood the lands in question are part of the demesnes, and supposing it to be a 'manor of ancient demesne,' yet the manor and its demesnes are impleadable at common law and not in the lord's court, for then the lord would be judge in his own cause."—(*Baker* v. *Wich*, 1 Salk. 56, and the cases there cited.)

lands are of the same tenure as the demesnes, and this is not altered by a subsequent inclosure or "approvement."

In the same way it is held that the copyholds in such manors are not properly ancient demesne: being held at the will of the lord, though according to the custom of the manor, they are in the eye of the law part of the demesnes[c] *.

* Bracton, lib. iv. p. 293; Fleta, 5, c. 5.

These copyholders have often been classed erroneously among the true tenants in ancient demesne, who are all freeholders by an *ancient* tenure of socage †. The limits of ancient demesne were therefore not enlarged by the conversion of feudal tenures into socage in 12 Car. II.

† Burton, Compend. 1,031.

The copyholders have very frequently the same customs, but not the same privileges as the tenants in ancient demesne. They are suitors in the court baron, the latter being in reality judges. The most important privileges of the latter were the exemption from serving on juries, from payment of toll and tax "for all things concerning their husbandry," and the right to try all suits concerning their land in the court of ancient demesne, "that they might not be called from the plough to any foreign litigation, as at Westminster, or elsewhere."

These actions were determined by a writ peculiar to this tenure, called the "small writ of right close" (*parvum breve de recto clauso*); the tenants had also their peculiar writ of *monstraverunt*, if more than the ancient and customary services were demanded by the lord. A fine or recovery levied or suffered in the superior courts at Westminster changed the tenure to "frank-fee," until reversed by a *writ of disceit* brought by the lord in the court of ancient demesne. This last peculiarity caused great in-

[c] *Brittle* v. *Dale*, 1 Salk. 186, 1 Ld. Raym. 45; *Smith* v. *Frampton*, 3 Lev. 405, Co. Copyh. § 14.

conveniences, the title to the land having been unmarketable until the fine or recovery was reversed, or the seignory released by the lord. The writ of disceit was abolished by the Fines and Recoveries Act; "the substitution of a simple deed renders such mistakes impossible for the future," and has deprived the tenure of most of its former importance [d]. Most of the other privileges are now valueless or obsolete.

The tenants in ancient demesne are freeholders, although they require admission by the lord of the manor. This incident of their tenure has caused them to be called customary freeholders, and has led many distinguished writers to speak of them as merely "an exalted species of copyholders," or in the language of Coke *, "copyholders of frank-tenure [e]," as opposed to the ordinary "copyholders of base tenure."

* Co. Copyh. § 32.

They must not be confounded with the customary freeholders of the north of England, whose estate seems to have been that of mere tenants-at-will with a *tenant right*, not enforceable at law until late in the sixteenth century. After much dispute and many contrary decisions it appears to be settled that these are in reality copyholders, and have been treated as such in the later legislation [f].

[d] "In manors which are ancient demesne, whether belonging at this day to the king or the subject, the court baron has the only and exclusive original jurisdiction (subject to an appeal to the Common Pleas by writ of false judgment) in all actions relating to lands held of the manor by an ancient tenure of socage." (Burton, Compend. 1031; 4 Inst. 269; 1 Bac. Abridg. 172; 3 Real Prop. Rep. 13; 2 Scriv. on Copyh. 691; Williams on Real Prop. 118; 3 & 4 Will. IV. c. 74, § 4, 5, 6.)

[e] Blackst. 2 Comm. 100. They are the privileged villeins of Bracton (*villani privilegiati*), lib. iv. c. 28; Britton, 66; Fitz. Nat. Brev. 13, 14; Hale, Comm. Law, c. 5, n.; 2 Inst. 235.

[f] These customary estates are found in Cornwall, Somerset, Devonshire, e.g. by the custom of Lidford Castle. (*Periman's Case*, 5 Co. 84;

There are many various customs in these freeholds of ancient demesne, as descent to the youngest son, or to the youngest or eldest sister, or daughter, or to all the males equally as in gavelkind*. But these customs are unimportant in our present enquiry, the ancient demesne lands in Kent being gavelkind, and not different from any other lands held by an ancient tenure of socage.

* Co. litt. 140, b.

The manors and demesnes, &c., were never so held, and consequently can neither be ancient demesne nor gavelkind.

Hasted† appears to draw a distinction between "the socage tenures of gavelkind and ancient demesne," which may lead to confusion if it is not remembered, that in the four Kentish manors of ancient demesne the limits of the two tenures are identical. He seems to have translated Bracton's account of ancient demesne word for word, which however being general, and applicable to the whole of England, does not quite suit the peculiar circumstances of this county.

† vol. i. 311.

The ancient demesne of Kent, described in Domesday Book as *Terra Regis*, is comprised in the four manors of Aylesford, Dartford, Faversham, and Milton (by Sittingbourne).

1. Aylesford[s].

The limits of the ancient demesne were thus traced by

Co. litt. 59, b.) In Northamptonshire, Co. Copyh. § 32, but chiefly in the north of England, viz. "in North Yorkshire, that part of Lancashire called Over-sands, the south-west portions of Durham and Northumberland, and over the whole of Cumberland." (3 Real Prop. Rep. 13; Scriven on Copyh. c. 19; Lewin on Trusts, 188, 466.) See the judgment of Lord Ellenborough in *Doe d. Reay* v. *Huntingdon*, 4 East. 271; Williams, Real Prop. 118, note, and cases there cited.

[s] Described thus in Domesday Book: "In Larkfield Hundred the King holds Aylesford. It pays land-tax for one suling. Land for fifteen

* vol. iv. 423. Hasted*: "That part of the parish which lies on the north-east side of the river Medway, in which is the town and church of Aylesford, is in the manor of Aylesford and is ancient demesne, the jurisdiction of which extends likewise over the borough of Rugmerhill, in the parishes of Yalding, Hunton, Horsmonden, and Brenchley." It appears that the demesnes[h] of the manor are situated partly in the parish of Aylesford, and partly in Yalding. The manor was never held in socage during the continuance of the feudal system, and these demesnes have therefore never been gavelkind.

We are told that the manor was held by military service in the ninth year of King John by Osbert Gifford, soon after which time it escheated to the Crown. In 14 Hen. III. it was granted on the same terms to Sir Richard de Grey and his heirs. The inquisition *post mortem* of Will. de
† Cal. Geneal. 149. Duston, 55 Hen. III. 19†, gives further details as to the escheat of the manor, and the settlement of a rent-charge in frank-marriage on the said William de Duston, grandfather of Isabella de Grey, tenant of the rent-charge.

In 31 Edw. I. the king claimed the manor by a writ of right, but the jury found for Sir Henry de Grey, the
‡ Hast. iv. 424; Regist. Roff. 154. tenant‡[i].

"In 9 Edw. III. Richard de Grey of Codnor died holding this manor of the king *in capite*, by the service of one
§ Hast. iv. 425. knight's-fee§."

It is recorded in the Book of Aid, compiled in 20 Edw.

ploughs. In demesne there are three ploughlands. Forty *villani* with five *bordarii* (husbandmen) hold five. There are eight slaves," &c.

[h] From the letters patent 5th April, 1 and 2 Ph. and M., by which the manor was granted to Sir R. Southwell and his heirs, to hold by military service, after Wyatt's rebellion, cited by Hasted.

[i] Pleas of Crown in Canterbury, 21 Edw. I., 3, 7, 21.

III., that John de Grey of Codnor held the manor as one knight's-fee. This book is the standard or canon by which the military or socage nature of each estate in the county was determined in the following reigns. The advowson was retained at first by the Crown, then granted by Henry I. to the priory of Rochester, and finally given by Henry VIII. to the Dean and Chapter of his newly founded cathedral of Rochester *.

* Hast. iv. 446.

The reputed manor of Pullens is part of the ancient demesne of Aylesford. It was the subject of the suit of *Humphry* v. *Bathurst*, Lutw. 740, 754. The plea having been omitted that the land in dispute was of the nature and tenure of gavelkind, the court would not take notice of the fact, "nothing being pleaded or found in the record concerning the custom [k]."

2. Dartford.

According to Domesday Book this manor contained two and a half sulings of arable land. There has always been a large amount of waste land in this manor, e.g. Dartford Heath and the Brent, which whether enclosed and built over or not, must be of the same tenure as the demesnes of the manor, i.e. held by a tenure superior to that of gavelkind, and not converted into free and common socage till the reign of Charles II.

After being held by the Barons De St. Paul, and resumed by the Crown as an escheat (among the *terræ Normannorum* confiscated when Normandy was lost in the reign of John), the manor of Dartford was held by successive kings, and by them from time to time alienated and resumed. The tenure was always military, and the de-

[k] Robinson, c. 4, init. There is a very full account of the circumstances leading to this suit in some MS. memoranda by Hasted. (Add. MSS. Brit. Mus. 5,512.)

mesnes were never thought to be gavelkind. The freedom of the demesnes will be best shewn by the history of the descent of the manor and its appurtenances. On the death of Edmund, Earl of Woodstock, in 4 Edw. III., he was found by inquisition to have held by military service *in capite* "the manor of Dartford and the rents of assize of the tenants in Cransted, Combe, Cobham, Chesilhurst, Dartford, Gilde, Stanhill, the ferry over the Darent, tolls, fairs, a market, view of frankpledge, profits of courts *," &c.

* Hast. ii. 296.

The manor of Dartford, with which afterwards became incorporated the manor of Dartford Priory in the same parish, was granted with other lands and possessions of the king in Dartford, by James I., to the Earl of Salisbury, in fee to hold of the king as of his manor of East Greenwich by fealty only in free and common socage, and not *in capite* or by knight-service, paying a yearly rent. This grant was confirmed by a private Act of Parliament in 4 Jac. I.

In 1699 these premises were conveyed to Thomas Gouge, who died intestate in 1707, leaving three sons, Thomas, Nicholas, and Edward. A dispute arose between them as to the descent of the manor, and its appurtenant rents of assize arising from the gavelkind lands above mentioned lying within the manor of Dartford. The eldest son shewed that the estates had been held *in capite* by knight-service from the first alienation by the Crown until the reign of James I., and it was conceded by all parties that neither of the two manors, now united, had been held in gavelkind before that reign.

It was, however, asserted by the two younger sons, that by the private act of 4 Jac. I. a socage tenure had been created, which from that time caused the manor and all its appurtenances to descend according to the custom of

the tenure of gavelkind, "as other lands of socage tenure had usually done*." * Hast. ii. 299.

The eldest brother insisting that the lands could not become gavelkind in modern times, the dispute was for a while appeased.

It is difficult to see how the claim of the younger brothers could have been supported by any one who understood the real nature of gavelkind land, which, *ex vi termini*, must have been held, or is presumed to have been held, in an ancient tenure of socage from the date of the conquest of England. We have seen that a burgage tenure cannot be created in modern times, and it is also evident that land could never be rendered ancient demesne, which was not so held from the beginning.

As to the royal grant creating a socage tenure before 12 Car. II. c. 24, the remarks of Lambarde† are worth remembering, viz.— † Peramb. 534.

"Ancient knight's-fee is not of the nature of gavelkind. When I speak of socage and knight's-fee, I must always be understood to mean a tenure long since and of ancient time continued, and not now newly or lately created, for so it may fall out otherwise than is already reported by me. As for example, if land anciently holden by knight-service come to the prince's hand, who afterward giveth the same out again to a common person to be holden of his manor of East Greenwich in socage, I suppose that this land, notwithstanding the alteration of the tenure, remaineth descendible to the eldest son only as it was before[1]."

In the same way lands held by the military tenures of castleguard or escuage uncertain, might come to be held in socage by the commutation of their service for a certain money payment. Yet such lands were never treated as

[1] Kirby Lee's Case, 1 Sid. 138; De Beggbrook's Case, 26 Hen. VIII. 4.

gavelkind; and many military lands came to be held as petty serjeanties, and were then decided to be held in socage, but not to be gavelkind [m].

Another point to be considered is this. Some of the property in dispute consisted of rents of assize, or rents-service arising out of lands which were both gavelkind and ancient demesne. Nothing is clearer than that ancient rents of this kind are of the same nature as the land, and it appears to have been settled that a rent-charge recently created out of such lands will follow the same rule *, although the earlier judges were slow in arriving at this decision. Rents therefore reserved out of ancient demesne or gavelkind will follow in descent the customs of those tenures, unless as in the present case the rent-service is part of a manor anciently held by a military or a spiritual tenure. "For (says Robinson) though the tenancy be of gavelkind nature, yet the rent-service, by which such tenancy is holden, may well be descendible at the common law †. Nor does there seem to have ever been a doubt concerning a rent reserved on a gift in tail, or lease for life or years of gavelkind lands, but as incident to the reversion it shall follow the nature of the lands ‡." In all other cases the rent follows the customary course in descent, "being part of the profits and issuing out of it [n]."

* 22 Lib. Assis. 78; 4 Edw. III. 32; 26 Hen. VIII. 24.

† Lamb. Peram. 548; 7 Edw. III. 38; 21 Hen. VI. 11; 22 Edw. IV. 10.

‡ Rob. i. c. 5.

The rents of assize, therefore, while unsevered from the seignory, descended in the same way as the manor and the demesnes, and it was only necessary to discover whether the act of 4 Jac. I. or of 12 Car. II. c. 24, could possibly have created by implication a new tenure of gavelkind.

On the death of Thomas, the eldest brother, the inherit-

[m] Dionysia Noel's Case, *infra*. [n] *Randall* v. *Jenkins*, 3 Keb. 214.

ance descended to Nicholas, the second, as heir at common law. His younger brother again claimed his share as co-heir in gavelkind, and the matter was decided by an action.

Nicholas Gouge brought a special action for debt against William Woodin, which was tried at bar in the King's Bench in Trinity term, 1734. The plaintiff's case was that Thomas Gouge, his brother lately deceased, had demised a capital mansion or messuage and several parcels of land (parts of the manor of Dartford) to the defendant for seventeen years, at a yearly rent. That on the death of the said Thomas Gouge the reversion in fee had descended to him as heir-at-law, being the next eldest brother, the said Thomas having died intestate without issue. He therefore claimed that reversion and the rent, then two years in arrear. The defendant Woodin pleaded simply that the manor and lands were of the nature and tenure of gavelkind, and ought to descend and be divided among the heirs male equally; and that the reversion in fee had in fact descended according to the custom of gavelkind to Nicholas and Edward Gouge, the surviving brothers, as co-heirs in gavelkind of Thomas. The case was argued in Trinity term, and in the Michaelmas term following the judges determined, (1.) That nothing could alter the tenure of gavelkind lands, except an Act of Parliament passed expressly for that purpose. (2.) That nothing can render lands subject to the custom which are shewn not to have been so subject originally. (3.) That there was nothing in the act of 4 Jac. I. nor in the general act of 12 Car. II. c. 24, which expressly altered the course of descent of lands throughout England; the fact therefore that the military tenure had been changed to socage did not alter the course of descent. (4.) They noticed also,

that it seemed to be quite settled that lands originally held by a military tenure are not subject to any gavelkind customs.

A verdict was therefore found for the plaintiff Gouge, who thenceforth held the manor and its appurtenances as sole heir-at-law *.

* Hast. ii. 299.

It is clear from this judgment that it makes no difference whether the land at any modern period be held by military, spiritual, or socage tenures. A piece of land might be held by barony, or in francalmoigne, or in grand serjeanty, or simple knight-service, and yet be of the nature of gavelkind, if it had originally been held in that species of ancient socage. On the other hand socage land cannot become gavelkind in modern times, if it were originally held by a tenure superior to socage, e.g. any of the tenures just mentioned, whether military or spiritual.

The lands in dispute in *Gouge* v. *Woodin* being parcel of the manor of Dartford, i.e. part of the demesnes, and the rents-service being appendant to the seignory, were held at common law, and had nothing to do with the tenure of ancient demesne. Indeed, if they were ancient demesne they must have been also gavelkind, and *vice versâ*, the limits of these two ancient socage tenures being identical, as we have already seen, in the Kentish manors of ancient demesne.

The subordinate manor of Portbridge or Bicknors appears to have part of the demesne land of the superior manor of Dartford. It was granted by Edward III. to his newly-founded priory of Dartford, having in 20 Edw. III. been assessed with the other ancient military lands in Kent with the aid levied on the knighthood of the Black Prince. In the Book of Aid, which since then has formed the official list of those lands, it is recorded to have been

one knight's-fee in the hands of several joint-tenants, husbands it seems of co-heiresses. The superior lord was Warren de Monte Canisio, or Montchensie *.

* Hast. ii. 308.

The parish of Wilmington is part of the ancient demesne of Dartford. The manor of Wilmington, or Grandisons, appears to have always been gavelkind. It was granted by Henry VIII. in his 35th year with other lands and rents in the manor of Dartford, to Geoffrey Pole, to hold *in capite* by knight-service °. It appears from Hasted's History †, to have been divided between co-heirs in gavelkind; which was confirmed by the terms of a private Act 10 William III., authorizing the sale of this estate by certain trustees appointed for that purpose.

† vol. ii. 334.

The manor of Rowehill, or, as it was formerly called, La Ruehille, in the same parish, is also gavelkind, as appears from the inquisition *post mortem* of Anselm de Gyse, 23 Edw. I. 52, recently published in the *Calendarium Genealogicum* ‡, viz. "the jury also find that John, son of the said Anselm, is his nearest heir, &c., but they find that the manor of La Ruehille is partible, and that all the sons of the said Anselm are co-heirs of it."

‡ p. 504.

3. Faversham.

This manor was part of the royal demesne as early as the beginning of the ninth century. At the date of Domesday Book it contained seven sulings of arable land, which are also described as "seventeen ploughlands," of which two were in demesne, and the rest in socage or gavelkind. (The number of ploughs kept by the villeins

° Hale, Common Law, 312. "Even in Kent if gavelkind lands escheat or come to the Crown by attainder or dissolution of monasteries, and be granted to be holden by knight-service or *per baroniam*, the customary descent is not changed, neither can it be but by Act of Parliament, for it is a custom fixed to the land."—(*Robins.* i. c. 5.)

and *bordarii* was twenty-four, which seems to be out of all proportion to the other measurements). It was granted in the reign of Stephen to the new Abbey of Faversham to hold by barony. On the dissolution of monasteries the manor was resumed by the king, who released many of his privileges to the inhabitants of the town by charter 37 Hen. VIII. The demesnes were granted by Henry VIII. in his 31st year to Sir T. Cheney, to hold as the twentieth part of one knight's-fee *in capite* by knight-service. The bounds of the manor and ancient demesne are thus given by Hasted*: "The town and parish of Faversham, the boroughs of Harty, Ore, Ewell, Selgrave, Oldgoldscheld, Chetham, Brinnystone, Badlesmere, Oldeboud-island, Rode, Graveney, Bourdfield, and the lands of Monkendane in the parish of Monkton."

* vol. vi. 335.

† Hast. vi. 171.

4. Milton (by Sittingbourne)†.

The account of this manor in Domesday Book shews that it was of importance even at that date[p]. The demesnes were four sulings in extent, the tenants' portion no less than twenty-four. At a much later period the demesnes were estimated to contain 484 acres, but this calculation does not include all the demesne-lands in the hundred of Marden belonging to this manor. In the hundred of Milton they extend into the parishes of Milton,

[p] "In Midletune hundred King William holds Mideltune. It paid tax for twenty-four sulings. Without these there are in demesne four sulings, and there are three ploughs in the demesne. In this manor are 309 villeins and 74 husbandmen: they have 167 ploughlands. . . . There is forest enough to pasture 220 swine. The tenants in the Weald pay fifty shillings for horses and harness. In the manor are 10 slaves. . . . . Of this manor Hugh de Port holds eight sulings and a yoke (8½), which in the time of King Edward were with the rest held at a yearly rent (i.e. in socage, or gavelkind), and there he has three ploughs on his demesne," &c.

Halstow, Newington, Minster, Bredgar, Stockbury, Tunstall, Milsted, Bapchild, and Sittingbourne.

The jurisdiction of the Court of Ancient Demesne held for the hundred of Milton, extended over the eighteen parishes within the hundred, and over all the Island of Sheppy, except the manor of Harty, which is ancient demesne of the royal manor of Faversham[q]. It also extended over the hundred of Marden *, containing within its bounds the parishes of Marden, Goudhurst (in part), and Staplehurst (in part). * Hast. vi. 51.

The manor of Milsted affords an example of the free tenure of the royal demesnes in the hands of a subject. In 4 Edw. I. Thomas Abelyn died seised in fee of the manor and one capital mansion, with one carucate and a-half of land in Milsted, &c., held of the king *in capite* by knight-service[r]. This one carucate and a-half is described as consisting of 63 acres of land, 6 of wood, held together with 40s. of quit-rents, and other tenements in Morton and Elmsley.

The hundred of Marden lies within the Weald, and is not specially described in Domesday Book, being then mere forest-land. We must, however, except one portion of the demesnes of Milton manor, which were situated in Goudhurst parish, viz. the large manor of Bokinfold, with its park, forest, and demesne lands †. This was not held in gavelkind like the rest of the hundred. This we learn † Hast. v. 163, vii. 69.

[q] The manors of Newington (seven sulings), of Tong (two sulings), of Tunstall (three and a-half sulings), and of Murston, are described separately in Domesday Book. In some cases the land is mentioned to have been taken by the owners at that date "from the king's villeins."

[r] "Tenentur de domino Rege in capite per servicium unius fœdi militis." Inquis. *post mortem* T. Abelyn, 4 Edw. I. 21; N. Abelyn, 6 Edw. I. 17; Isolda de Apperfield, 24 Edw. I. 46; Calend. Geneal., 234, 264, 521; Book of Aid levied in Kent, 20 Edw. III.; Hast., vi. 107, 108.

inter alia from an inquisition *post mortem* (lately published) taken on the death of Hamo de Crevequer, 47 Hen. III. 33[s]. The jury found that the manor of Bokinfold descended to the eldest son, the other tenements to coparceners according to the custom of gavelkind. The manor was soon afterwards granted in fee to Bartholomew de Badlesmere to hold of the Crown in socage, and not as before by barony.

* 3 Lev. 405.

In the case of *Smith* v. *Frampton* *, it was pleaded that certain tenements held of the manor of Gillingham in this county, were ancient demesne. The manor of Gillingham is not described in Domesday Book as *Terra Regis*, having been held long before the Conquest by the Church of Canterbury in francalmoigne, and at the Conquest having been allotted to the archbishop as part of his barony. It appears, however, by the Parliamentary Survey of the royal manors in 1649, that four denns or districts in the Weald were held in socage of this manor †. Of these, Haydhurst in Marden parish, and Wincehurstden in Goudhurst, were ancient demesne ‡.

† Hast. iv. 230.

‡ Hast. vii. 52, 68.

It may be well here to say a few words concerning the Weald or Wild of Kent. This was known in ancient times as the forest of Anderida §. Not much of it was under cultivation at the date of the Conquest, but it had been usual on granting a manor to the Church, or to a layman in another part of Kent, to annex a grant of some portion of this forest, for the feeding of droves of swine. Hence

§ Hast. i. 297; Somner, Rom. Ports. 108; Robins. Gav. ii. c. 8.

[s] "Dicunt juratores quod Rob. de Crevequer filius Hamonis de Crevequer junioris est propinquior heres ejus de prædicto manerio de Bogingefold pertinente ad baroniam prædictam, &c.

"Item dicunt quod M. de Crevequer . . . R. de Crevequer . . . H. de Crevequer filii prædicti Hamonis, et R. J. et T. filii Hamonis de Crevequer junioris sunt propinquiores heredes prædicti Hamonis qui ultimo obiit de toto residuo tenementi prædicti."—(*Calend. Geneal.*, 107.)

such land was called drove-land, and the tenants drove-men [t] *.

Most of the special customs and privileges of the socage tenants in the Weald are obsolete or unimportant. The principal privilege was that no tithe of wood was payable within its limits; this has ceased to be of importance since the Tithe Commutation Act, but the point was formerly the occasion of frequent disputes [u]. Robinson notices another custom peculiar to the Weald, that the lords should have all the great timber-trees, and the freeholders in gavelkind only the underwood, "or at most the oak, ash, and beech under forty years' growth †:" and he cites several early cases to prove the custom. But this right of the lords was commuted for a small quit-rent as early as the reign of Richard II. ‡

Another custom noticed by him is that of '*land peerage*,' by which the tenants in the Weald claimed the soil of the highways and the hedges.

All questions relating to the rights or services of these tenants, the common of pasture, right of pannage, &c., were decided in a court called a *Parrock*, held once a-year by the lord at some place within the Weald [x] §.

* Somn. Gav. 117; Co. litt. 4b; Lamb. Peramb. 208, 213.

† lib. ii. c. 8.

‡ Somn. Rom. Ports. 112.

§ Somn. Gav. 23.

[t] For the limits of the Weald, see Dearne's History of the Weald of Kent, introd.; Hasted, i. introd.; Somner, Rom. Ports.

[u] Shelford on Tithes, 128; *Chichester* v. *Sheldon*, 3 E. and Y. 1102; Gilbert, 674, 686; Co. litt. 115 a, note 15; Hasted i. 295, vii. 243. Dearne, xxxi., cites a treatise on the subject by Sir Roger Twisden, and Hasted an argument in the Common Pleas shewing the reason of the exemption. (Harl. MSS. 980, 304.) But Cranbrook in the centre of the Weald did not enjoy the exemption. (Hast. vii. 111.)

[x] "The country of the Dens (a British word) runs along the edge of the Weald, forming a belt of forest round the cultivated country quite independent of the woods, which once lay between village and village."—(*Kemble*, *Anglo-Saxons in England*, vol. ii. p. 483.) There were 32 (some say 44) dens subject to the jurisdiction of the Court of Dens held

There are frequent notices in the old books of the services peculiar to tenants of gavelkind land in this district. For instance, the king's villeins holding land there within the manor of Milton paid "money for horses and harness, 50s. a-year." Others are mentioned to have paid "leave-silver" or "*danger*," which was a payment for leave to plough "between the autumnal equinox and Martinmas," when it was supposed that the lord's right of pasture might be disturbed or *endangered*. Thus in the Custumals of Halden, Teynham, and Charing, mention is made of the half-mark usually paid as "leave-silver rent." Other services mentioned in the Custumals were "swine-gavel, scot-ale, and gavel-rafter," being quit-rents received in lieu of payments in kind by tenants in the Weald *.

* Somner, Gav. 26, 30; Hast. vii. 435.

Although a great part of the Weald was waste forest, and not cultivated for long afterwards, it must be remembered that a large number of manors within its bounds are described in Domesday Book, and were held at that time either in francalmoigne or by service of chivalry, in which cases the manor and demesnes were not of the nature of socage or gavelkind. A few important places which were held from the first in a tenure superior to gavelkind are not described in the great Survey. Such, for instance, was the manor of Tonbridge, extending over all the district known as the Lowy of Tonbridge, being the land for a league in every direction measured from Tonbridge Castle.

at Aldington in this county. Sir R. Twisden, cited by Mr. Kemble in the passage just quoted, has left in his journal a full account of the nature of this Court of the Weald.

CHAPTER IX.

Tenure by Barony.—By Castleguard.

Baronies spiritual and temporal.—Abbey of Faversham.—Dover Castle.—Varieties of Castleguard Tenure.—Chilham Castle.—Tonbridge Castle. Rochester Castle.—Peculiar customs.—*Periman's case.*—Castleguard rents. Manors of *EASTWELL, TIRLINGHAM.—Lennard* v. *Earl of Sussex.—COWDHAM, BRASTED, HEVER, APPERFIELD, CHEPSTED.*—Disgavelled land.—Inquisitions *post mortem.*—Tenure of Advowsons.

BARONY was the highest tenure known to the law, with the exception of free alms or francalmoigne, where not even fealty was due from the tenant.

Having said that lands held by "ancient knight-service" have never been gavelkind, *à fortiori* we may lay down that those originally held in barony, the highest kind of knight-service, are equally free.

Again it has been shewn above that much land in Kent was before the Conquest *allodium* or "thane-land," utterly opposed in all its incidents to the nature of the socage or gavelkind held of the same lords. After the Conquest we have seen that this *allodium* was transferred to Norman tenants *in capite*, from whom feudal services were thenceforth due; but this transmutation of ownership did not change the nature of the land, and in the hands of these tenants in chief, or of the knights their under-tenants, the free land remained as free, and in the hands of the socage tenants the gavelkind remained as liable to fixed services, as in the preceding times.

These tenants *in capite* were at first barons in all cases, excepting in Kent the priors who obtained leave to keep their tenure of free alms. At first, therefore, there were

in Kent barons of two kinds, the first including the Archbishop, Bishop of Rochester, the Abbot of St. Augustine's, and the Abbot of Battle (as tenant of the manor of Wye): the second included all the other tenants *in capite* by military service, of whom the most important was the king's half-brother Odo, Earl of Kent and Bishop of Bayeux.

The first class, or the spiritual barons, were on the same footing as the rest in respect of the military service due from them to the Crown. They therefore sat in the king's great council with the temporal barons: but it has been observed that the Bishops sat in a double capacity as military [a] tenants and as spiritual advisers or assessors to the king; the abbots sat only as tenants of land *in capite*.

It became necessary in later times to have a writ of summons as well as land held in barony, before the tenant in chief could sit in the council, which became the house of peers. This led to a distinction between the greater and lesser barons about the end of the reign of Henry II., but at first all land held directly of the Crown by any military service was held *per baroniam*. It appears from the Black Book of the Exchequer, a roll of military tenants in chief compiled in the time of Henry II., that the knights'-fees of the Archbishop of Canterbury were $84\frac{3}{4}$ in various counties, of the Abbot of St. Augustine's 15, and of the Bishop of Rochester 8 [b].

[a] Hody, Convocation, 126: "Non sedemus hic episcopi, sed barones: nos barones et vos barones—pares hic sumus." Fitz-herb. Pass. Becket; Matt. Paris, 7. As to the right of abbots, &c., to be barons without holding lands *in capite*, see Abbot of Leicester's Case, *Rot. Parl.* 25 Edw. III. 2; Prior of Northampton's Case, 12 Edw. II.; Prior of Bridlington's Case, 14 Edw. II.; Prior of Canterbury's Case, 5 Henry IV.; Somner Antiq. Cant. 101; *Modus tenendi Parliamentum*, 24; Prynne, Register, 141; *Dialog. de Scaccario.*

[b] Hearne, *Lib. Nig. Scacc.*; Dart., Hist. Cant. Cathedral, 53; Madox,

We may shew the free-tenure of the manors, demesnes, and appurtenances held by the spiritual and temporal barons either by considering their condition in the hands of the barons, or in those of the sub-tenants owing them military service.

There were at first not more than ten barons in Kent, excluding the Abbot of Ghent as an alien, but the number was soon increased. On the disgrace of Odo, then Earl of Kent, four years after the completion of Domesday Book, and the resumption of his estates by the Crown, nine new baronies were created for the defence of Dover Castle.

In the reign of Stephen another barony was created out of the ancient demesne of the Crown, *scil.* the Abbot of Faversham was made a tenant "in chief *et per baroniam*" of no less than sixteen knights'-fees[c] *.

* Co. litt. 97 a; 2 Inst. 44.

We will now confine our attention to the tenure of Castleguard, with which nine new baronies above mentioned were more especially connected.

One hundred and seventy-one knights'-fees, in this and other counties, were given by William I. to John de Fiennes, the first Lord Warden, to distribute among other barons for the defence of this castle. He chose thereupon the eight whose names follow, viz. William de Albrincis or Avranches, Fulbert de Dover, William de Arsic, Galfrid de Peverel, William Maminot, Robert de Port,

Exch. 439. Some records estimate the Archbishop's knights'-fees at sixty altogether. A claim was made upon him for nineteen more by the officers of the Exchequer, which he disowned.

* The abbots of Faversham, though barons, did not sit in Parliament after 18 Edw. II. No writ of summons was directed to any of them after that year, probably on account of their extreme poverty. (Hast. vi. 327; Southouse, Hist. Fav. Cronicon Faversh. 71.)

The Mote in the island of Harty was a portion of one of these sixteen fees. It was the subject in dispute of the famous suit of *Kyme and Lowe* v. *Paramour*, Co. Entries, 182, described in a preceding chapter.

* Lamb. Per: 153; Hast. ix. 483.

Hugh de Crevequer, and Adam Fitz-William *, each of whom was bound by the tenure of the lands so given to maintain one hundred and twenty soldiers. These lands were held *in capite* by barony, of the Lord Warden, and afterwards of the king (in chief) as of his Castle of Dover. Besides these there was a considerable quantity held by the tenure likewise of ward to this Castle [d]."

There were in Kent three varieties of castleguard, *viz.*:—

1. Barony
2. Knight-service } with uncertain castleguard service.
3. Socage; with certain castleguard rent-service.

All lands held in these tenures were free from the nature of gavelkind, excepting of course the case of lands originally gavelkind and subsequently held by service of castleguard.

1. In the first class may be ranged those manors which the nine barons retained in their own hands. Each selected one manor as the "head of his barony (*caput baroniæ*)," or *honour*, as the seignory over a cluster of manors was called. Such, for example, was Chilham Castle, head of the barony of Dover. Hasted, who had access to the court-rolls, gives several valuable extracts as to the tenure of the lands held of this honour [e].

[d] For lists of the manors and lands so held see Cotton. MSS., Vesp. A. 5, "Castelli Feodarium;" Darrel, Hist. Dover Castle, "Constabularia;" Feodary of Kent, in the Public Record Office; Lansdowne, MSS. 369.

[e] "A court-leet and court baron is held for the manor of Chilham, at which the several rents due from the denberries in the Weald are likewise collected, the tenants holding them in socage tenure. The manors and lands now held of the honour of Chilham by knight-service are the manors of Huntingfield, Shillingheld, Kingston, Denton, Esture, Hurst, Luddenham, Wetherlings, Northcourt, Colebridge, Tappington, Dyvyne, Placy, Young, Much Hougham, Little Hougham, Godsland, Sibberston, and Maxton. The royalty of it on the river Stour extends from Shalms-

2. The superior lords gave most of their lands to military under-tenants, who took upon themselves the service due from their superior lord for certain portions of the land, or who held by the service of guarding the lord's castle, the lord undertaking all the service due to the king. In either case the tenure of the under-tenant was merely a species of ordinary knight-service*. Thus Littleton wrote: "Also divers tenants hold of their lords by knight-service, and yet they hold not by escuage nor shall they pay escuage; as they which hold of their lords by castle-ward, i.e. to ward a tower† of the castle of their lord, or a door or some other place of the castle‡, upon reasonable warning when their lords hear that the enemy will come," &c. The tenure was always certain, 'as of a particular castle and a particular portion of it'§, but the services were essentially uncertain, or the tenure would have become socage‖.

* Co. litt. 82 a, 106 b.

† Hast. vii. 528.

‡ §. iii.

§ Hast. ix. 483.

‖ Wright's Ten. 214.

In this second class were many manors held of the king's castle of Rochester, and other castles held by private lords, as Tonbridge, Canterbury, and others[f].

3. In the third class were all those manors at first held by military services of castleguard, which were afterwards held by a payment of a fixed rent in money in lieu of all

ford Bridge to the bounds of Godmersham parish."—(*Hast.* vii. 277.) "At the court held for the manor of Chilham the tenant of Luddenham is constantly presented by the jury for default of service, as being held of it under the notion of one knight's-fee, and he is always amerced at two shillings, the payment of which is never withheld."—(vi. 389.)

[f] For the Castles of Kent *vide* Lambarde, Peramb. Introd; Darrell, *De Castellis Cantiæ*, cited Hasted, xii. 64, and the other authorities above-mentioned. Of Tonbridge Castle Hasted writes: "There were formerly some payments of castleguard to it, but they have been long since disused, a few payments excepted which seem to be made for encroachments on the lord's waste."—(v. 219.)

services. This change was made in the lands owing service to Dover Castle as early as the reign of Henry III. We are told that Hubert de Burgh, then Lord Warden, obtained of the king by petition, that all the tenants should thenceforth pay a yearly rent in lieu of personal service. The rent was fixed at a charge of ten shillings yearly for every warder, which new rent was called from thenceforward castle-ward *. The same change took place in the manors held of Rochester Castle [g].

* Hast. ix. 484; Lamb. Per. 154.

There appears to have been a custom in both these castles, that in default of payment the rent should be doubled and trebled, &c. In the case of Dover Castle the custom was ended by a private Act passed in 32 Hen. VIII., which enacted (1.) that the castleguard rents should be payable at the Exchequer, and not at Dover

[g] "Many estates in Kent, Surrey, and Essex are held of the castle of Rochester by the tenure of castleguard. Of these the manor of Swanscombe is the principal, the owner of which, as well as the rest holding their lands of this castle, had anciently the charge of it committed to them, and owed particular services to the defence of it."—(*Hast.* iv. 73, 74.) These services have been long since turned into annual rents of money. The following is a list of the manors and lands (in Kent) which were held by castleguard of this castle and now pay rents in lieu of it:—

"Luddesdon.
Ryarsh.
Delce, G.
Delce, L.
Addington.
Norton.
Cobham Eastcourt.
Aldington Eastcourt.
Stockbury.
Hammill Court.
Farnborough Court.
Boughton Monchensie.
Midley.
L. Caldecott.
Goddington.
Padlesworth.
Bicknor.
Fraxingham.
Wootton.
Eccles.
North Court (part).
Borstable, G. and L.
Combes.
Watringbury (part)."—*Hast.* ii. 413; *Lamb. Per.* 530.

Castle as had been usual: and (2.) that in default of payment the rent in arrear should be doubled and not further multiplied.

But this did not apply to Rochester Castle, where the custom is said to exist, that if the castleguard rent falls into arrear it is liable to be doubled on each return of the tide in the Medway during the time of default.

We are told * that the legality of this custom was nearly put to the proof in the last century by the lord of Swanscombe manor, to whom as mesne lord the rents from Eccles and Farnborough Court were due. On these rents falling into arrear a double amount was demanded and ejectments brought against the owners of the defaulting manors. "A special jury was struck to try the matter: but by the interposition of friends the dispute was compromised and a small composition accepted in lieu of the penalty, though it was entered on the rolls of Swanscombe manor in such way as that the custom of this payment might not be lessened by it in future."

* Hast. ii. 414.

It might have been difficult to prove the legality of such a custom, the manors having been held at first in ordinary knight-service; the services of castleguard moreover were not commuted before the reign of Henry III., and any usage which can be shewn to have first commenced at any period since the reign of Richard I. will be void as a custom [h]. It must also be shewn that such a custom is reasonable and compulsory, so that there should be no option in the lord whether or not he would choose to reduplicate the rents; and it must have been peaceably and continuously enjoyed from time immemorial.

In the argument on Periman's Case † mention was made

† 5 Co. 84 b.

[h] *Rex* v. *Jolliffe*, 2 Barn. and Cress.

of "a custom in Kent, that if a free tenant of a castle does not pay his rent, he shall lose the land holden of the castle."

If this custom is meant to apply to free land, (i. e. not gavelkind,) held of the castles above-mentioned, the same objection will hold good as against the custom of multiplying rents. The military services were not commuted for rent until after the reign of Richard I.

If the custom did not apply to free land, it must have been on gavelkind land. But it is exceedingly rare to find any gavelkind land or tenements held by service of castleguard. Supposing such land and tenements to exist, and such default of payment to be made, still no such custom is necessary, the Custumal having prescribed the ancient remedy of gavelet; and though held of a castle such land would of course lose none of the peculiar qualities of gavelkind.

From the manner in which Robinson mentioned this alleged custom, he would seem to have thought that it might actually be the obsolete custom of gavelet. But that process was only exercisable if no distress could be found on the tenant's land for twelve weeks, in which case the lord might hold it for a year and a day, and afterwards take it into his demesnes by the award of the County Court, and on the ultimate refusal of the tenant to pay the arrears[1].

The custom then was not the process of gavelet, nor could it be valid on lands which were not gavelkind. It may have been a reminiscence of the feudal forfeiture of

[1] The process of gavelet has long been superseded by the modern modes of recovering arrears of rent. Indeed Lambarde doubted if it had ever been put in use in his time. (Peramb. 554.)

land for neglect of service[1] (abolished 52 Hen. III. c. 22), but it can hardly have been a good custom in modern times.

Great discussions have been caused at various times by the commutation of the personal service of castleguard for the payment of a fixed rent-service.

"If a man holds his land to pay a certain rent to his lord *for castleguard*, this is tenure in socage; but if a sum in gross or other thing be paid or given by the tenant and voluntarily received by the lord *in lieu of castleguard*, yet the tenure by knight-service remains*."

* Litt. §§. 98, 99, 121.

If the rent were paid in temporary commutation of the personal service, the tenure was military; but if the personal service were changed to a rent-service it was socage †.

† Co. litt. 87 b. n.

It was held indeed by Fitz-herbert that the military character of the services survived any commutation for rent, and he illustrated the position by the case of lands held of an honour in the king's hands by the service of homage, fealty, and rendering ten shillings yearly *ad wardam Castri de Dover* ‡.

‡ F. N. B. 256.

This opinion was very fully discussed in the case of *Steven* v. *Holmes*, Litt. 47, respecting a manor held of the king by homage, fealty, and the service of paying 8*s*. 1*d*. yearly "to the ward of Dover Castle." It was maintained on the authority of Litt. § 121 ("que est de plus validity que F. N. B. 256,"), that this rent-service converted the

[1] Distress of the freehold by writ of *cessavit* was again given to the lord by Stat. West. 2, c. 21, if the tenant were two years in arrear and would neither pay nor find sureties for future payment. But the proceedings on a writ of *cessavit* (abolished 3 and 4 Will. IV. c. 27) could not be described as a special custom of a castle in Kent. Such customs have been allowed if carried back beyond the period of legal memory. (Robins. ii. c. 6.)

tenure into socage. On the other side it was argued that the tenure remained knight-service, and this was shewn in several ways, for—

1. The Court of Wards and Liveries and the Exchequer have always dealt with these lands held of Dover as being held by knight-service. (They are enumerated for instance in the *Testa de Nevil* and other rolls of knights'-fees, as well as in the Books of Aid for assessing military aids and scutages.)

2. A record was produced proving, that *all the lands held of Dover Castle by castleguard rents were anciently and originally held by knight-service*[k]. (If this had not been the case the lands would certainly have been claimed as gavelkind in ancient times, which the inquisitions *post mortem* shew not to have happened.)

3. A distinction was drawn between land held (as in this case) *in capite* by such a rent, and of a castle. It was said that the former would be a military tenure, except

[k] An account of the change is preserved in the Feodary of Kent into which the record mentioned in the text appears to have been incorporated. The record gives the names of the barons of Dover Castle, the knights'-fees of which their baronies were composed, and the castleguard service due from each before the year 1263, and continues to this effect:—

"At length the king and his barons, considering that it was not safe that a foreigner, the vassal of another sovereign, should have the custody of the principal castle of the whole realm, the Lord Warden retired from his office, and the Lord Hubert de Burgh, Earl of Kent, was appointed Lord Warden of the castle. He, considering that it was not safe for the castle to have new guards every month, ordained, with the assent of the King, &c., that each baron should pay ten shillings for his castle-guard for one month, and that by these means soldiers, horse and foot, should be hired to guard the castle."

It appears from the records of the Court of Wards, that there were no less than eighty-eight knights'-fees *in Kent* held of Dover Castle by ancient tenure of castleguard. A list of them will be found in the Appendix. See also Camden's *Britannia*—Dover.

where the king took a rent-service expressly in lieu of all services and demands[1] *.

* 33 Hen. VI. 7; 7 Co. 12a.

The court held that a perpetual change of the uncertain personal service to a certain rent-service converted the tenure to socage †. "But it should not be concealed (said Mr. Hargreave) that the court seemed inclined to think, that under special circumstances there might be a change of the castleguard into rent, by consent of the king and his tenant, without altering the tenure, where evidence could be given of the manner in which the change was effected[m]."

† Co. litt. 87 a.

Several castleguard manors came undoubtedly to be held in socage in very early times; such was the important manor of Swanscombe, of which so many others were held. In the inquisition taken on the death of Edmund of Woodstock, Earl of Kent, in 4 Edw. III., we read that he held the "manor of Swanescombe of the king *in capite* as of his honour Rochester Castle by the service of paying yearly rent to the said castle, viz. at the feast of St. Andrew £4 4*s.*, and at the King's Exchequer 8*s.* 3*d.* in lieu of all services." So in the same record it is said, "Wicham is held by him *in capite* by the service of paying a yearly rent for all services."

Another inquisition will shew the confusion that existed on the question whether these commuted services made a socage tenure. It refers to several manors and tenements held of Rochester Castle, and is interesting as an

[1] "Quant le Roy dit 'pro omnibus serviciis et demandis' donques il expresse son intention que seroit socage."

[m] "Resolv. que le tenure fuit un socage tenure come est trouve. Mes le matter de record recite seroit bone matiere en evidence al inquest a trouver ceo un tenure de chivalry."—(*Luttrel's Case*, 4 *Co.* 88; *Capel's Case, Benl.* 9, 10.)

example of the abundance of the information respecting Kentish tenures to be derived from documents of this kind. It was taken on the death of Alice Charles or Charlys, who had married Walter Colepeper. She died in 9 Ric. II., and the jury found, "that she held in dower at the time of her death these lands and tenements of R. Charlys, her kinsman, &c.: *one-third* of the manors of Addington, Padlesworth, Nashenden, L. Delce, and Palstre, and one half of the ferry at Smallhythe, *excepting the lands and tenements parcel of those manors and of the tenure of gavelkind, of which she was not endowed according to the custom of gavelkind*[n]."

"And that the portion of the manor of Addington, except the gavelkind lands and tenements aforesaid, were held of the Earl of March .... as of the manor of Swanscombe by homage and fealty, and 36*s.* of castleward to be paid to the king yearly at his castle of Rochester, at the feast of St. Andrew the Apostle..... And they find that the said one-third part of the manor of Padlesworth, *excepting the aforesaid lands and tenements of gavelkind*, is held as well of the king as of another lord by military service, that is to say, of the king by homage and fealty and the service of castleward to be paid to him yearly at his castle .... and of the Bishop of Rochester by homage and fealty and the service of paying 16*d.* yearly at Michaelmas. ..... And they find that the said manor of Nashenden, excepting the lands and tenements of gavelkind, is held of the king *in capite* by military service..... And that the

[n] If the manors had been gavelkind she would have had a moiety. The writs of dower are useful in demonstrating tenures, e.g. as to the ancient knight-service and castleguard manor of Kenardington, see *Inquis. post mortem* of Thomas de Normanville, 2 Edw. I. 37, and a writ of dower for one-third of the manor, "Placitum pro dote Dionysiæ de Normanville," Abbrev. Plac. 2 Edw. II. rot. 68.

manor of Little Delce, except, &c., is held of the king *in capite* by military service, ... and that a parcel of this manor is held of the heirs of Lord Say by the service of paying one pair of gilded spurs yearly." (Palstre and Smallhythe, &c., are described in the same way as the foregoing, i.e. as held by military service and the payment of a castleguard rent *.)

* Esch, Roll, 9 Ric. II. 135.

As to Nashenden, we find the following entry relating to that manor and to Great Delce, which were both held by castleguard rents of Rochester Castle:—

"The jury also find upon their oath that Richard de Haspale, brother of Alfred de Haspale, is his nearest heir as to all the lands and tenements which are frank-fee in the said manor (*quæ sunt de libero feodo*). They find also that all the lands and tenements which are gavelkind (*quæ sunt de gavylygeyndeches*) are partible among all his brothers according to the custom of Kent °."

The inquisitions above quoted shew the clearness of the distinction drawn between customary lands and those held by castleguard, whether these latter were by commutation of services converted into socage or not. In the case of *Gouge* v. *Woodin*, cited in the last chapter, it was decided that no change of military land to socage imbued it with customary qualities. The change of which the judges spoke in that case dated only from 4 Jac. I., but in the inquisitions and trials respecting these castleguard lands we find the same principle applied where the change to socage took place as early as the reign of Henry III.[p]

° *Inq. p. m.* Galfrid. de Haspale, 15 Edw. I. 25; Cal. Geneal. 379; Hast. iv. 170, 173.

[p] The manor of Queen Court in Ospringe is an instance of a very early conversion of a military tenure to socage. In 10 Edw. II. the manor and demesnes were granted to Sir J. Pulteney to hold *in capite* by the service

We shall find that the same rule was recognised in the case of francalmoigne manors given out in fee-farm before 18 Edw. I., a process which created a socage tenure.

One more example of the freedom of castleguard tenements is afforded by the manor of Eastwell.

Hugh de Montfort, at the date of Domesday Book, held one suling (afterwards mentioned as two knight's-fees) in Eastwell as part of his barony. About half of this land was in demesne. In 52 Hen. III. Matilda de Eastwell, wife of John de Criol, died seised of this manor and the advowson held by knight-service *in capite*. Her son Bertram de Criol died seised of it in 23 Edw. I., holding it of the king in like manner and by the payment of a castleguard rent to Dover Castle, this manor being part of the *Constabularia* or barony of Dover. Of his two sons, John and Bertram, *the eldest* inherited Eastwell, and endowed Eleanor his wife of it for her life. It was held of Dover Castle by the like services until the reign of Henry VIII., in whose reign Sir Christ. Hales held the manor of the king as of his honour of Dover Castle *by knight-service*, after which time there could be no further dispute concerning the tenure, inasmuch as all the lands of Hales which had been gavelkind were disgavelled in 31 Hen. VIII.[q]

of paying one red rose yearly, if demanded, for all services. (Hast. vi. 506; Co. litt. 86 a.)

[q] Hast. vii. 403; *Inq. p. mortem*, 52 Hen. III. 32, 55 Hen. III. 34, 23 Edw. I. 48, and 30 Edw. I. 26. The eldest son of Bertram de Criol inherited also the manor of Tirlingham with its appurtenances, held *in capite*. (Calend. Geneal. 503, 712; *Testa de Nevil*, "Estwelle.")

Tirlingham was held by the service "of repairing and maintaining a moiety of a hall and chapel in Dover Castle, and of paying to the great and small wards of the castle." It was a member of the barony of Folkstone. (Hast. viii. 165.)

The entry in Domesday Book respecting Eastwell is valuable as proving

Besides the manor and demesnes the Criols held lands in gavelkind belonging to the superior manor of Eastwell, which are also described in the escheat rolls, but these were not held by castleguard. (For example, lands and tenements in the reputed manor of Pottebury or Pothery in the same parish [r].)

The principle that lands held anciently by castleguard cannot become gavelkind, was established finally in the suits respecting the estates of the Earl of Sussex in the last century. Had these suits been adequately reported, no doubt could have remained upon the point; but (according to Hasted's History) in one or two instances the rule has been neglected even since that decision, not of course in a court of law, but in the compromises made by family agreement when questions of tenure have arisen upon intestacies.

The facts of this important case were briefly these.

Richard Lennard, Lord Dacre, was tenant in tail under a settlement made by his father, of the manors of Cowdham, Chevening, Apperfield, Bertrey, Hayes, Brasted, and Overneys in Sundridge, with rents of assize and lands in these manors: he was also tenant in fee-simple of a manor and lands in Nockholt under his father's will, and tenant in tail of the advowson of Hever, which had been entailed on his father, (passing under the word 'hereditament,' and being an advowson in gross never having been affected by the later disentailing deeds).

that the Kentish suling consisted of four "yokes" or *juga*, and that the Norman carucate was sometimes equal to the *jugum* or quarter-suling, as was mentioned before. "Hugh de Montfort holds one manor Eastwell .... taxed at one suling. *There are three yokes within Hugh's division, and the fourth is without*, being of the fee of the Bishop of Bayeux. The arable land is three carucates in all."

[r] Esch. Rolls, 48 Hen. III. 39, and 34 Edw. I. 37; Hast. vii. 409.

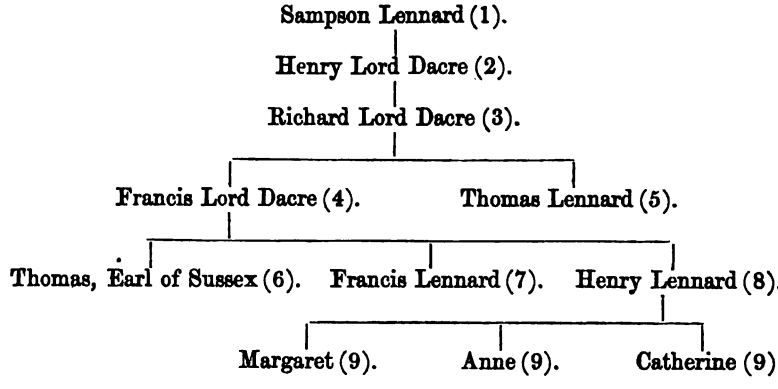
Richard Lord Dacre died in 1630, leaving issue two sons, Francis Lord Dacre and Thomas Lennard, having, both by a deed executed in 1629, and by his will, settled all these estates on his eldest son in tail male.

Francis Lord Dacre (after exercising certain jointuring powers) disentailed the whole property in Hilary term, 1649, and afterwards devised it to his eldest son Thomas in tail male. He died in 1662, leaving three sons, Thomas, afterwards Earl of Sussex, Francis Lennard, and Henry Lennard.

His last-named brother died in 1703, leaving three daughters[s].

In Trinity term, 1706, the widow of Henry Lennard, as the guardian and next friend of her three infant daughters, filed a bill in Chancery, by which she claimed for them one-third part (being their father's share) of the manors of Chevening, Cowdham, Nockholt, Brasted and Chepsted, with all their rights, members, and appurtenances, together with the third part of the other lands (above mentioned), the names of which could not be given until certain jointure deeds were produced by the Earl of Sussex, as heirs of the

[s] A pedigree of the persons principally interested in the proceedings in *Lennard* v. *Sussex* and *Burridge* v. *Sussex*:—



body of Richard Lord Dacre (3), by virtue of the settlement made upon him by his father (2): all the said manors, lands, and tenements being of the nature and tenure of gavelkind. And it was alleged by the bill that on the death of Richard Lord Dacre (3), his two sons, Francis (4) and Thomas (5), had inherited all the said manors, lands, &c., as co-heirs in gavelkind. And that Thomas (5) had conveyed his share to Francis Lord Dacre (4) for valuable consideration. And that the Earl of Sussex had unjustly claimed to be the sole tenant in tail of the said manors and lands, &c., and the reversions expectant on the life-estates of the jointresses: whereas he and his two brothers were co-heirs of the whole according to the custom of gavelkind: and the share of Henry Lennard (8), his brother, had now descended to his three daughters (9) as his co-heiresses.

The Earl of Sussex by his answer shewed that—

a. The manor and lands of Nockholt had never been included in the settlement made upon Richard Lord Dacre;

b. That the entail of the manors and lands in Apperfield, Cowdham, Hayes, and Bromley, had been barred by his father in 1649, and the whole devised to himself in tail male. Supposing, therefore, that the whole were gavelkind, yet even then, being socage, they would have been deviseable in that manner;

c. That Thomas Lennard (5), his uncle, had neither inherited any portion of the manors and lands claimed, nor sold any rights over them for a valuable consideration;

d. That the manors of Cowdham, Bertrey, and Apperfield, and all the lands and tenements in Cowdham, Bromley, and Hayes, settled upon Richard Lord Dacre, were not of the nature or tenure of gavelkind, but then

and for all time whereof the memory of man runneth not to the contrary, were held of the Crown *in capite*, and by castleguard for the ward of Dover Castle, and were never partible among heirs male as in gavelkind [t].

e. That the manors of Brasted, Chepsted, and Chevening, and the advowson of Hever, had never been gavelkind, but had always been held of the Crown by knight-service [u].

[t] *Cowdham.* Described in Domesday Book as four sulings held by Odo, then Earl of Kent. On his disgrace it was made part of the barony of Maminot, being held as two knight's-fees by castleguard. In 56 Hen. III. William de Saye died holding it in barony, and was succeeded by William, his *eldest* son. (Rot. Esch. 56 Hen. III. 37, 12; Philipott, 123; Rot. Esch. 23 Edw. I. 42.) Geoffrey de Saye sat in the House of Lords as Baron Cowdham in 28 Edw. III. His son, dying in 49 Edw. III., was found by inquisition to have held Cowdham *in capite by military service*, i.e. by barony with a castleguard rent. In 6 Hen. IV. the manor demesnes and rents of assize were found to be held *in capite* as before. (Hast. ii. 60, 75.)

Apperfield (originally Appuldre or Appletree Field), was part of the two knight's-fees in Cowdham above mentioned, and was held of that manor as one knight's-fee (according to the *Testa de Nevil*) in the reign of Edward I. In the Book of Aid 20 Edw. III., recording all the Kentish lands held by ancient knight-service, this manor is described as one knight's-fee held by Stephen de Ashway and his parceners (*scil.* husbands of co-heiresses), which Henry de Apperfield held of the king (as of his honour of Saye) by service of castleguard. (Lansd. MSS. 369; Hast. ii. 69.) It is thus described later in the Feodary of Kent, (35 Hen. VIII).

Bertrey was part of the same two knight's-fees of Cowdham, and was held by the family of Saye by military service. Walkelin de Maminot gave the tithes of 246 acres of his demesnes in Bertrey in free alms to the monks of Rochester. The terms of the deed, which have been before quoted, shew the distinction between his demesnes (*dominium meum*) and the gavelkind land of the manor. ("Quod si aliquid de prædicto Dominio in rusticanam servitutem translatum est," &c.) (Somn. Gav. 127; Selden, Tithes, 313; *Registrum Roffense*, 268; Hast. ii. 73.)

[u] *Brasted.* The manor demesnes and rents of assize were held of the Archbishops of Canterbury as part of the barony allotted to them at the Conquest. It is described in the Book of Aid, 20 Edw. III., as one-fourth

He was not entitled to this advowson by virtue of the settlement made upon Richard Lord Dacre(3), but by a much earlier instrument, the general wording of the will of Sampson (1) having entailed this advowson among other *hereditaments.*

f. But the manors of Brasted and Chepsted had *also* been in the ownership of Sir Henry Isley, when all his socage lands were disgavelled by the Act of 2 and 3 Edw. VI.[x]

of a knight's-fee. It had been held in francalmoigne before the Conquest. The owners of the manor owed services of sergeanty to the Archbishop. (Hast. iii. 146.)

Chevening was also held by knight-service of the Archbishops. (*Inq. post mortem* Rob. de Crevequer, 47 Henry III. 33; Hast. iii. 106.) It was part of the Archbishop's honour or manor of Otford. The Parliamentary Survey taken in 1649 of all the Crown-lands mentions the differences of tenure in Chevening, which preserve the distinction between the *villani* and *bordarii*, the gavelkind tenants and the cultivators of the demesnes who at first were inferior to them. There are two sorts of land, *yokeland* and *inland*, paying different heriots and quit-rents; there are also copyholders, the representatives of that semi-servile class of cottiers, *cotarii*, mentioned above to be chiefly found on Church land.

The manor of Chevening claimed in the suit of *Lennard* v. *Sussex*, is entered in the Book of Aid 20 Edw. III. as one-half of a knight's-fee.

Hever. The manor had always been held in knight-service; it is not specially described in Domesday Book, but must have been included in the description of Great Orpington, of which manor it is a portion. A moiety of it was granted by the Abbot of St. Augustine's in 4 Edw. I. to William de Hever, to hold as the fourth part of a knight's-fee. (See Hast. iii. 191, and Calend. Geneal. 170.) The advowson was of course of the same tenure as the manor to which it was originally appendant.

[x] *Chepsted* was part of Chevening manor, which has been shewn to have been part of Otford manor. It must have been demesne land, inasmuch as it was always held by knight-service. In the Book of Aid 20 Edw. III. mention is made of one-twentieth part of a knight's-fee called Chepsted. The demesne lands of this manor are described by Hasted, iii. 127. The entry in Domesday Book shews that there was a great deal of free demesne land within the manor of Otford held by the Archbishop, and by "three *thanes, Taini*," his military tenants.

There were other estates in dispute in this suit, as Hayes, and Overneys

g. In the same way the manor and demesnes of Chevening had been in the ownership of William Roper, when his socage lands were disgavelled by the same Act.

h. The farm in Sundridge, and the other lands in dispute not already mentioned, had also been in the ownership of persons whose socage lands were disgavelled; and there was finally one small farm which the Earl *believed* to have been disgavelled, but of which the tenure was not very clearly known, several exchanges of land having taken place.

No further proceedings appear to have taken place immediately, owing to the death of Mrs. Lennard the plaintiff, in 1706, in which year died also the Earl's second brother Francis (7), without issue and intestate.

Soon afterwards the Earl contracted to sell the manor of Cowdham and certain other lands and tenements which had formed part of the disputed estate. Upon this the guardian of the Earl's nieces (9) made the same claim as had been advanced before, and demanded in addition a moiety of the share, to which Francis Lennard deceased was alleged to have been entitled as one of the co-heirs in gavelkind. The case was decided finally by a trial at bar, in the Queen's Bench, where the Earl of Sussex fully sustained the truth of the statements before made by him. It was decided that the lands, lying in Kent, were *primâ facie* presumed to be gavelkind, until the presumption was rebutted by the proof of the ancient freedom of their tenure by castleguard and knight-service. As to the re-

in Sundridge parish, besides the lands in Nockholt, which last are presumed to have been gavelkind on the authority of an ancient grant of "demesne land in Nockholt *tenendum in gavelkind.*" (Somn. Gav. 180.) But there was no necessity for proving an ancient military tenure of these lands.

maining lands, not so held in ancient times, the fact of their having been disgavelled was proved by the inquisitions *post mortem* of the persons who had owned them in 31 Hen. VIII., and 2 and 3 Edw. VI. "The evidence that the lands were disgavelled was very clear as to all but one farm of thirty acres and worth £30 *per annum:* and that being left to the jury they gave a verdict for the whole for the defendant[y]."

In the course of this case the inquisition *post mortem* of Richard Lord Dacre was put in to prove the settlement made on him and the heirs of his body, which had been transcribed in it *totidem verbis.* It was objected that this was not good evidence of the terms of the settlement, but the objection was overruled[z].

We could not want anything to prove more clearly that these castleguard manors are not gavelkind; and if the manors, then their appurtenances before enumerated, as the demesnes, the advowsons, rents of assize, and all profits of the soil annexed to the seignory, such as stallage, pickage, and the like.

But it must be remembered that this freedom is not due specially to the castleguard service or the castleguard rent; nor is it due merely to the fact that this tenure was a species of ancient knight-service, and that "no ancient knight-service land is gavelkind."

Such a rule must be empirical and liable to cause confusion, if the general principle be not clearly apprehended: *scilicet* gavelkind is nothing but ancient socage, and anything originally held by a tenure superior to socage is not

[y] *Burridge* v. *Sussex*, 2 Raym. 1292.

[z] As to the admissibility of these inquisitions, and the purposes for which they generally issued, see Taylor, Evid. 1295; Phill. Evid. i. 392; 1 and 2 Vic. c. 94, § 12; and Calend. Geneal. i. pref.

gavelkind. Castleguard is one of these superior tenures: others are barony, sergeanty, knight-service, and francalmoigne the highest of all.

A question has sometimes arisen as to the tenure of particular advowsons. In the case just cited it was shewn that the advowson of Hever was always held by knight-service, and it is important to remember that the advowson is of the same tenure as its manor. Thus, for example, the manor of Chilham, held by barony and castleguard, had no less than six appendant advowsons, all of the same tenure as the manor itself.

In ancient times the lord of a manor nominated the clergy of the churches within the lordship, and this right of nomination or advowson soon became hereditary. It passed with the manor, or with such fragment of the manor as the lord might define by a grant. Thence it was said to be *appendant* to the manor*, i.e. "to the demesnes, which are of perpetual subsistence, but not to rents or services which are extinguishable and cannot therefore support such appendancy." Being appendant to the demesnes, it must be held originally by the same tenure. If they were gavelkind at first the advowson is gavelkind now, and this whether the advowson remain appendant or be severed.

* Gibs. 756; Co. litt. 122 a; 2 Ro. Abr. 60.

But if the manor and demesnes were originally held in francalmoigne or by services of chivalry, then the advowson anciently appendant on them is not gavelkind.

The manor of Ashford was among those estates which were held of Dover Castle by payment of a castleguard rent. It is described as having been held by the great family of Criol "by knight-service of the king *in capite* by ward to Dover Castle and the repair of a tower there called Ashford Tower*."

† Hast. vii. 528.

It was always enumerated among the military lands of the county, its owner having paid aid for it as such in 20 Edw. III., as appears by the Book of Aid taken in that year, and the Feodary of Kent, as well as the more ancient rolls of knight's-fees in the Exchequer. In 3 Edw. VI. it was granted by the king to be held in socage *in capite*, a change of tenure which could not make it gavelkind, as shewn by the cases before cited. It would appear from the history of this estate given by Hasted, that on the death of Mr. Roper in 1754, intestate, the inheritance of this manor, with those of Wall and Esture, descended on his two sons as co-heirs in gavelkind. "But they being infants and there being many incumbrances on these estates, a bill was exhibited in Chancery, and an Act procured 29 Geo. II. for the sale of them." This description might easily lead to mistakes as to the tenure of all lands anciently held by castleguard.

The estate really ordered to be sold by the private Act 29 Geo. II. c. 24, comprised the manor of Ashford (*not* the demesne lands), the manor and parsonage of Sturry, and the manor of Haugh, besides several pieces of land in Ashford. Part of the estate was gavelkind, but clearly not the manor of Ashford, for nothing can change the descendible properties of land held by ancient knight-service. And the Act recites accordingly that "whereas the said estates are now vested *either* in the said T.R. as heir at the common law *or* in the said T. R. and H. R. as co-heirs in gavelkind," &c., and elsewhere speaks of the brothers as the "right heirs at common law, and in gavelkind respectively."

Several loosely reported cases of partition among reputed co-heirs may doubtless be explained in the same way, lands of different tenures having passed in the same course of

ownership, while disputes as to partition had reference only to those of the customary tenure.

The decision in the suit of *Lennard* v. *Sussex* above cited makes it clear that this was the case with the castleguard manor of Ashford[a].

[a] A list of all the knight's-fees held of Dover Castle is given in the Feodary of Kent, and in the Red Book of the Exchequer, 157 d.

The total number was thus apportioned among the eight baronies:—

	FEES.
Constabularia	56
Dover	15
Avrenches	21
Arsic	18
Peverel	15
Maminot	24
Port	12
Fitz-William	6
Crevequer	5
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CHAPTER X.

Tenures by Sergeanty.

Grand Sergeanty.—Its varieties.—Petty Sergeanty at first a Military Tenure.—Afterward held to be Socage.—Grand Sergeanties in Kent.—*WEST PECKHAM, SEATON, SHORNE, ARCHER'S COURT, BILSINGTON, HURST*, &c.—Petty Sergeanties in Kent.—*OXENHOATH, ST. MARY CRAY, LULLINGSTONE.—Noel's Case.—OTHAM, BEKESBORNE*, &c.—Sergeanties held of the Archbishop of Canterbury.—Spread of Socage Tenure.

SERGEANTY was another of the military tenures superior to socage. Lands originally and anciently held by any variety of sergeanty were therefore in Kent descendible to the eldest son, according to the general rule before laid down.

The tenure was of two kinds, grand and petty sergeanty. The services were "often honorary and sometimes ludicrous," but the tenure ranked among the noblest.

Grand sergeanty is thus described in the books: "where one held of the king by such service as he ought to do in his proper person to the king *, as to carry his banner or lance, or to be his carver, butler, chamberlain of the Exchequer, or the like [a]."

* Bract. ii. 35; Old Tenures 2; Litt. §. 153.

It differed from ordinary knight-service in the following particulars, viz.:—

a. The services were in general due within the realm.

b. No escuage was owed by the tenant, and no aid except to ransom the king †.

† Madox Exch. 458.

c. The amount of the heir's *relief* was different.

[a] "And note, that all which hold of the king by grand sergeanty, hold of him by knight-service; and the king shall have ward, marriage, and relief."—(*Litt.* §. 158.)

d. The service was certain, and only the time of rendering it was uncertain.

The tenure was not abolished by the act 12 Car. II. c. 24 *, but so regulated as to remain a dignified species of socage, the tenant still being liable for the purely honorary services, if demanded.

* Co. litt. 108 a. n.

The definition above given, "where a man ought to do the service to the king *in his proper person*," &c., though correct as far as it goes, does not include all grand sergeanties †. A case is cited by Littleton from the Yearbook 11 Henry IV., of one who held land *in capite* by the service of finding a man to serve the king in his wars at any place within the four seas: "And the Chief Baron of the Exchequer demanded if this were grand or petty sergeanty. And Hanke J. said that it was grand sergeanty, *because he had a service to do by the body of a man, and if he cannot find a man to do the service he himself ought to do it.*" And this was acknowledged by the other judges.

† Litt. §. 157.

From this case Coke drew the distinction that there are two classes of tenants by grand sergeanty,—

1. Those who must serve in person;
2. Those who may send a deputy ‡.

‡ Co. litt. 107 a.

In the latter class are those whose service was to carry a banner, to blow a horn on an enemy's approach, to find soldiers for internal war. The distinction appears to be sound, although it contradicts at first sight the usual definition of the tenure: but Mr. Hargreave doubted the propriety of the judges' opinion in the principal case [b].

[b] Spelman recognised the same distinction in his description of the tenure:—"Grand sergeanty is that military tenure in which one holds lands and tenements of the king *in capite* by the service of doing some honorary office by the body of a man, himself or another (*per personam hominis*): and it is called military, not because the service is always to be

We find both classes in Kent, as will appear from the instances selected to illustrate the rule that ancient tenure by sergeanty is a bar to the presumption of gavelkind *.

* Co. litt. 106 b.

Petty sergeanty was also *at first* a military tenure. The service consisted in "rendering yearly to the king some implement or other thing pertaining to war †." It differed from the last-mentioned tenure in this: the services were not personal, or "done by the body of a man:" and they were *certain* both in their nature and in the period of payment ‡. This was eventually recognised to be nothing but a rent-service, and the tenure to be as much socage, as if an ordinary lord had reserved the rent of a rose, a spur, or a peppercorn [c].

† Litt. §. 159.

‡ Wright, Ten. 214; Co. litt. 85 b.

Though altered in its incidents among other tenures *in capite* by the act for abolishing feudal tenures, petty sergeanty still survives as a superior kind of socage §.

§ Co. litt. 108 b. n.

In the time of Bracton it would seem to have been a military tenure: for he wrote, that where one held by rent-service with the addition of any service to the king or escuage to the smallest amount, that was knight-service ‖.

‖ Bract. ii. c. 16.

But when Littleton wrote it had long been settled that petty sergeanty was socage in effect; and as to escuage or tenure by payments in lieu of personal military service, *if the amount were fixed*, that also was socage ¶.

¶ Litt. §§. 98, 99, 120.

performed in war, but because as with all military tenures, the king had wardship, marriage, and relief, from the heir."—(*Glossary, Sergantia.*)

[c] "Sargentia minor inter civilia servitia, quæ socagia vocant, numeratur: et dicitur cum quis ratione feodi regi tenetur annuatim exhibere exiguum aliquid ad apparatum bellicum pertinens, arcum, gladium, calcaria aurea, &c., quæ juxta Fletæ sententiam dimidiam marcam, non excedant."—(*Spelm. Gloss., Sergantia.*)

As to the incidents of petty sergeanty, see further Magna Charta, c. 37 (9 Hen. III. c. 27); Bracton, ii. 35; Stat. of Wards and Reliefs, 28 Edw. I.; Reeves, Engl. Law, i. 38; Fleta, i. c. 11.

But the important point to remember for our present purpose is that lands in Kent held originally by sergeanty *of either kind* are descendible to the eldest son. This rule is unaltered either by the early recognition of the fact that petty sergeanty was socage, or the later conversion of grand sergeanty into socage by the statute of Charles II. Such socage has nothing to do with gavelkind. Besides this, most of the estates held by sergeanty of either kind in Kent, are also described in Domesday Book as being held at the Conquest by barony or knight-service.

The charter of Edward I. produced in the case of *Gatewyk* v. *Gatewyk* (extracted at length in Robinson's "Gavelkind") is very explicit in its language respecting sergeanties: "We will that the said lands descend to his firstborn or other male heir, &c., as those descend which he holds *by sergeanty* or by military service, entire and without partition among other males [d]."

The sergeanties of Kent are enumerated both in the *Testa de Nevil* (pp. 205—219), and the Red Book of the Exchequer *, with great particularity. There are also notices of the conversion of sergeanties into tenures by simple knight-service, and *vice versâ*. It was forbidden in strict law to aliene lands held in sergeanty in this manner, the king having a right in such cases to resume the land, and this right was occasionally exercised: ("Sergantia non debet lacerari vel alienari [e].")

* Lib. Rub. 128 d.

[d] "Quare volumus et firme præcipimus pro nobis et heredibus nostris quod omnes terræ et tenementa, quæ prædictus A. in gavelykendam in feodo tenet et habet in comitatu prædicto, ad primogenitum suum vel alium heredem suum propinquiorem post ipsum, sicut et illa quæ per Serjantiam tenet vel per servitium militare, integre absque partitione inter alios inde faciendâ descendant."—(*Rob.* i. c. 5.)

[e] See *Placitorum Abbrev.*, Trin. 7 Johan. 5; and Mic., 38 Hen. III. 18.

The manor of *West Peckham* is an example of the different varieties of sergeanty. Before the Conquest it was "thane-land," or *allodium*, held by Earl Leofwin, brother of Harold II. *; it then became part of the barony of the Conqueror's uterine brother, Odo of Bayeux, being described in Domesday as consisting of *two sulings* with four tracts of forest (lying in the Weald of Kent). One-sixth of the land was held in demesne.

* Hast. v. 57.

In the reign of John it was a sergeanty held by the service of finding a man to carry the king's gos-hawks beyond sea †.

† Lib. Rub.Scacc. 128 d.

Soon afterwards it was held as two sergeanties, the first by the service just mentioned, the second by the *petty* sergeanty of finding a ship for the king ‡ and of making a money payment at the same time. This part, then, had become socage (not gavelkind), and is afterwards recorded to have been held by homage and fealty of the king, i.e. in socage [f] §.

‡ Co. litt. 108 b.

§ Litt. §. 117.

The former portion was found in a trial before the judges itinerant in 21 Edw. I. at Canterbury, to be held by the grand sergeanty before mentioned: it was also found "that of this sergeanty Gilbert de Clare, Earl of Gloucester, holds 200 acres of land worth yearly 100s., and 67s. yearly in rents of assize from the freeholders,

[f] "S. de Bendevill tenet Peccham in serjantiâ, et debet invenire navem Regi ad servicium suum et offerre Regi tres marcas."—(*Testa de Nevil*, 219.)

"Peccham tenetur per servicium mutandi unum austurcum Regi per annum."—(*Inq. p. mortem*, John de Peccham, 21 Edw. I. 35.) By this inquisition it also appears that John de Peccham left three daughters, of whom the *eldest* was heir to his land in sergeanty.

"Rob. Scarlet tenebat W. Peckam in capite per homagium," &c. His brother was heir. (*Inq. p. mortem* 33 Edw. I. 26, and Lansd. MSS. 309, 36.)

being part of the same sergeanty, which had become dismembered: and the said Earl failing to produce any instrument shewing his tenure, the lands were taken by the Sheriff for the King's use *."

* Harris, Hist. Kent, 234.

The other portion is noticed to have been held in grand sergeanty and knight-service by Lionel, Duke of Clarence, as tenant by the curtesy of England. He held a moiety of the manor which had been divided as above mentioned, not a moiety of that moiety, which would have been the case if the land were gavelkind [g].

W. Peckham is said in Domesday Book to have had one of its six carucates in demesne; in the *inq. post mortem* of Adam at Brook †, it was described (according to Hasted) as "a capital mansion, with rents of assize from the freeholders, and 184 acres of arable and wood."

† 11 Edw. II.

The following is an instance of a grand sergeanty which might be performed by deputy. The manor of *Seaton* in Boughton Aluph was held by the service of going, or providing a man to go, as *Vautrarius*, i.e. leader of the king's greyhounds, whenever the king went to Gascony, "until he had worn out a pair of shoes worth fourpence bought at the king's cost [h]." The word *Vautrarius* is read *Vantrarius* by Coke and Hearne in the *Lib. Nig. Scaccarii*, and taken to be "the man marching before the king as his fore-foot man." "And this service being admitted to be performed when the king went to Gascony to make war was *knight-service* [i]." The estate

[g] Thus Lord Abergavenny held the neighbouring estate of Yoke's-place as tenant by the curtesy in 16 Edw. IV. This manor is mentioned in the Feodary of Kent to have paid aid among the other military lands in 20 Edw. III. (Hast. v. 83.)

[h] Blount, Anc. Tenures, 142; Hast. vii. 388.

[i] *Inq. post mortem* John de Criol, 48 Hen. III. 39, and Ric. de Rucksley, 11 Edw. II., Co. litt. 69 b.

was afterwards held by castleguard service of Dover Castle [k].

The manor of Shorne is another example of the same variety of grand sergeanty. Sir John de Northwood held it as one knight's-fee of the Crown [l], and his heir is recorded to have held it of the Crown by the service of carrying a white banner or standard to Scotland when the king made war, for forty days *, at his own expense. The manor of Seale [m] is said to have been held by a somewhat similar tenure at the end of the fourteenth century, viz. by the sergeanty of blowing a horn on the approach of an enemy. This tenure by Cornage was also held to be a variety of knight-service.

* Hast. iii. 445.

The manor of Bilsington was a grand sergeanty of the ordinary kind. It was part of the barony of Odo of Bayeux, and upon his disgrace was granted to William de Albany to hold as the king's chief butler (*pincerna Regis*) at his coronation. The manor being divided between co-heiresses, the honorary services were multiplied. Thus Bilsington Inferior has been held "by carrying the last dish of the second course to the king's table,

[k] A still more ludicrous service was due from the tenant of Copeland and Atterton, otherwise called Archer's Court in the parish of River. The lands were held in grand sergeanty by the service of holding the king's head between Dover and Whitsand, as often as he should pass by sea between those ports, and have occasion for the service. (Hast. ix. 440. See *Inq. post mortem* of Salomon de Chanuz 31 Edw. I. 34.)

"Tenuit in capite de domino rege quoddam tenementum apud Ceperlond et Atterton per servitium tenendi caput ipsius domini regis quotienscunque transfretaverit in partibus transmarinis .... (Tenuit etiam diversa tenementa in gavelkind)."—(*Calend. Geneal.* 644.)

He was succeeded by his daughters as co-heiresses. It is said that the right to perform the service was claimed as late as the end of the sixteenth century. (*Inq. post mortem* Sir Matt. Browne 4 and 5 Ph. and Mary.)

[l] *Inq. post mortem* Roger Northwood, 13 Edw. I. 25.

[m] Co. litt. 69 b, 109 b; Harris, Hist. Kent, 274, Philip 309.

and presenting him with three maple cups," down to the present time. The other portion of the manor was held by the Priors of Bilsington "by serving the king with his cup on Whit-Sunday *."

* Hast. viii. 349.

The manor of Hurst and the estate of Goldenhurst formed a grand sergeanty, the tenant keeping a falcon for the king's pleasure. Part of this estate was converted into ordinary knight-service, and held as one sixtieth part of a knight's-fee [n] †.

† Ibid. 329. Madox, Exch. 453.

The Grange (anciently called Grenech) in Gillingham was held by the service of finding a ship and two armed men for the fleet of the Cinque Ports. The tenant is also said to have owed the service of an oar whenever the king sailed to Hastings [o].

The manor of Ashton was held by the office of guarding and carrying the king's falcons.

These were all grand sergeanties, and therefore knight-service, so that no doubt could be thrown on the freedom of their tenure, and their descent at common law. But the cases of *petty* sergeanty have sometimes presented a difficulty, *scil.* that of distinguishing from gavelkind lands those which were turned into socage in very early times. All the petty sergeanties in Kent will be found by inspection of Domesday Book to have been parcels of the baronies there described, and to have been in general held by knight-service of those baronies.

Being afterwards granted to hold of the Crown by yearly render of something pertaining to war, they were still classed among military lands, but soon recognised to be in reality *socage*. Yet being sergeanties the rule applied

[n] *Testa de Nevil*, 219.

[o] *Inq. post mortem* Manasser de Hastings, 5 Edw. I. 7, *Testa de Nevil*, 219.

to them, which has been quoted from the case of *Gatewyk* v. *Gatewyk* at the commencement of this chapter. We will now notice a few of the various forms of petty sergeanty in this county, and one or two cases from the records, which distinguish the lands held by them from gavelkind.

The manors of Oxenhoath * in West Peckham, Lullingstone, part of Little Delce (see *inq. post mortem* of Alice Charles, 9 Ric. II. in last chapter), St. Mary Cray, Elvyland in Ospringe †, and others, were held of the king by the sergeanty of paying one pair of gilt spurs yearly.

* Hast. v. 63.

† Ib. vi. 514.

Of these Lullingstone was held *in capite* as the fourth part of a knight's-fee, and paid aid as such in 20 Edw. III. with the other military lands. It is described ‡ as "a mansion, lands, and woods, with rents of assize in Lullingstone and Peyfrere." The two estates are separately described in Domesday Book, having been held by knight-service of Odo of Bayeux, as parts of his barony.

‡ Ib. ii. 542.

St. Mary Cray was part of the same barony, held afterwards by the tenure of castleguard as well as sergeanty §; it is numbered among the military lands in the Feodary of Kent, and in the roll *Constabularia* of the fees of Dover Castle.

§ Ib. ii. 115.

A suit took place respecting the tenure of *Elvyland* in the twenty-first year of Henry III., which shews that none of the above-mentioned estates were held in gavelkind.

Dionysia, widow of Richard Noel, was summoned to answer for deceiving the king's officers by affirming that her husband held his land in gavelkind instead of by sergeanty [p].

On appearing she denied that she had said whether he

[p] Noel's Case, *Placita coram Rege* 21 Hen. III. rot. 7 dors. Kent; set out in the published *Abbreviatio Placitorum*, 1.

held in gavelkind or by sergeanty. And she said that she herself believed it to be gavelkind.

A deed was produced by which Richard I. had enfeoffed her husband's brother, from whom the inheritance had descended to her husband, setting out that he was to render for the land one pair of gilt spurs yearly.

And she said that she had paid the king 100s. to have the custody of the heir, her son, whether the tenure were gavelkind or sergeanty.

The counsel for the Crown argued that she had falsely called the estate gavelkind, and had deceived the king, for she would never have had the wardship of the heir for so insignificant a price if the king had known that the tenure was a sergeanty.

She was permitted, however, to retain the land in dispute, until it should be clear who had caused the deceit, the land *not* being gavelkind, and also until it should be decided whether such a sergeanty was socage or knight-service.

The case was soon afterwards tried again at Westminster before the king in council *propter difficultatem*, and it was resolved, (1) that Dionysia Noel might retain the wardship and marriage without making any further payment to the king; and (2) that she had not wilfully deceived the Court, having produced a deed which clearly set out the services; and (3) that the wardship and marriage were not to be those proper to a *gavelkind* tenancy, nor to a tenure in *socage*, but to a *sergeanty*, i.e. a military sergeanty.

It is clear enough that the land was not gavelkind. But it is not evident why the judges held it to be a military tenure, except on the principle above stated, that all sergeanties were at first held to be knight-service.

But the rent paid to the king was certain, and paid at certain intervals. It must therefore have been socage after all, in accordance with the theory held in later times. It happens fortunately that great doubts having been felt as to the accuracy of the judgment on this point, the verdict of a jury was again taken, which finally decided that it was socage (not gavelkind).

"The jury further declare upon oath that the said William Noel held of the king *in capite* by petty sergeanty, *videlicet* by the service of paying one pair of gilt spurs yearly, worth sixpence, *and this tenure is socage*[q]."

The manor of Bekesbourne (which is variously called in ancient deeds Burn, Limingsburn, and Levingsburn) was part of the barony of Odo of Bayeux, and retained by him as part of his own estate. On the confiscation of his lands, this manor with its demesnes was given in sergeanty to be held by finding a ship for the king, when he should go beyond seas, and the payment of three marks *.

This tenure has been called *grand* sergeanty † because of the apparent uncertainty of the service.

But Coke said that such a tenure would be properly called *Liberum servitium*, which is a term never applied to military service. "And it is clearly neither grand sergeanty nor knight-service, because nothing is to be done

* *Testa de Nevil*, 216.

† Hast. ix. 269.

[q] William Noel was the son of Richard and Dionysia, named above. The verdict was given in the *Inq. post mort.* of W. Noel, 7 Edw. I. 47, Calend. Geneal. 286.

"Tenuit de domino rege in capite per parvam serjantiam videlicet per servitium unius paris calcariorum deauratorum pretii 6d., et est socagium." See also 20 Hen. III. 8, *Inq. post mort.* of Richard Noel: "Elisabeth Noel held the land by the same sergeanty in 21 Edw. I., as appears by the pleas of the Crown before the justices itinerant in that year."—(*Hast.* vi. 514.) Nich. de Gerunde paid aid for it in 20 Edw. III., as one-fortieth part of a knight's-fee.

by the body of a man, nor touching war, but ships to be found*," (*ad transitum nostrum ad mandatum nostrum*); and unless the ships were intended to be supplied in time of war, it would not even be petty sergeanty. In no case however could it be gavelkind. So far from being divisible among sons, it seems to have not been divided even among daughters [r].

* Co. litt. 108 b; Bract. ii. 35.

The manor and advowson of Otham were held in sergeanty, and are found to have been divided between two brothers, Robert and Walter de Valoignes; but this was not by any claim of gavelkind, but by a deed of gift, which was produced at Canterbury before the judges in eyre, 21 Edw. I. This estate paid aid in 20 Edw. III., as one knight's-fee, having then been further subdivided as recorded in the Feodary of Kent †.

† Hast. v. 515.

The manor of Eastbridge was held as a petty sergeanty by Hubert de Burgh, who found the king one sparrow-hawk yearly for it, in lieu of all services ‡.

‡ Ib. viii. 277.

The estates called Wavering and Overhill Farm in Boxley were held in sergeanty by the service in each case of "finding a horse of a certain value, and one wallet and a *broche*, or skin for wine" whenever the king should march with his army to Wales [s].

[r] An action was brought by William de Alding, or Galding, and his wife Avicia, against one W. de Beke, tenant of this estate, to recover forty acres of land as her reasonable share of the inheritance of her uncle lately deceased. The case was decided against her on proof that the land was held in sergeanty and therefore could not be divided. "Limingborne est serjantia Regis et non debet partiri."—(*Abbrev. Placit.* 34,.39.)

This parcel of forty acres is described in the suit as *one carucate of land.*

[s] "Willielmus de Longo Campo tenet Ovenell manerium quæ est serjantia domini regis . . . . et debet invenire domino regi unum equum et

This was a petty sergeanty for the same reason as in the foregoing case *.

* Co. litt. 108 b.

It appears from the Escheat Rolls † that part of the estate thus held in Wavering consisted of rents-service (which have been shewn before to descend in the same way as the manor so long as they are appendant to it); and that the widow of Robert de Hougham was endowed of a *third* part of the rents, not being descendible as gavelkind; also that the widow of Robert de Hougham, son and heir of the foregoing, entitled her second husband to be tenant by the curtesy of the *whole* of her estate, instead of a half as in gavelkind, and that he held *other* lands and tenements in gavelkind.

† Cal. Geneal. 640.

It could be shewn in the same way, by an examination of the Escheat Rolls, in the case of each estate held by sergeanty, that the descent to heirs, and the tenancies in dower or by the curtesy, quite preclude the notion that any of them were considered to be of a customary nature.

Wilmington, an estate in Boughton Aluph, was also held in petty sergeanty, *scil.* by finding a meat-hook for the king on all visits to the superior manor of Boughton Aluph ‡. It is entered in the *Testa de Nevil* as a sergeanty held of the *Earls of Boulogne* by the service of being the Earl's chief cook §. But in course of time the term sergeanty was restricted to tenures of the king; at first the Archbishops of Canterbury, and other barons, affected to bestow sergeanties of both kinds upon their vassals. These tenures were in reality nothing but simple knight-service

‡ Hast. vii. 392.

§ Ib. p. 219.

unum saccum cum brochiâ in exercitu Walliæ."—(*Rot. Hundred*, i. 215, 3 Edw. I. 7; *Blount, Anc. Ten.* 61.)

For Wavering, see *Inq. post mort.* Rob. Hougham, 2 Edw. I. 14, and 29 Edw. I. 48; and of Wm. de Chilton, 31 Edw. I. 14: Hast. iv. 341, 345.

or simple socage, according to the regularity and the dignity of the services reserved.

In this way the Archbishops of Canterbury made "grand sergeanties" of the offices to be performed at their consecration and enthronement, and some of the greatest noblemen held lands of them by the service of attending as butler, steward, or cupbearer on these occasions[t].

The Earls of Gloucester held of the archbishops as "high stewards" the Castle and Lowy of Tonbridge, and the neighbouring manor of Handlow. As "chief butlers" they held the manors of Brasted, Vielston, Horsemonden, Melton, and Pettes. At the same date (A.D. 1264) Lord Badlesmere held Hothfield by the sergeanty of being chamberlain. The manor of Horton was in like manner held by the cupbearer, and that of Chartons in Farningham by the chief carver *.

* Hast. viii. 190.

These manors all formed part of the archbishop's barony, and being held of him by knight-service were of course not gavelkind, as was shewn in the last chapter as to *Brasted* particularly, in the proceedings against the Earl of Sussex[u].

The extent in past times of the tenure of petty sergeanty has this importance in our own time, that it has tended

[t] Somner's Canterbury, ii. 20; Dugd. *Monasticon*, by Ellis, vol. i.; Cant. Appendix, Harl. MSS. 357; Hasted, xii. 535, 540.

"Non prætereundum est specialia quædam servitia etiam privatis exhibita serjantias olim nuncupatas."—(*Spelm. Gloss. Serjantia; Nichol's Britton*, ii. 5, 10.)

[u] The manors which were retained by the archbishops in their own hands are thus enumerated by Hasted:—"Aldington, Bexley, Bishopsbourne, Boughton, Charing, Dale, Gillingham, Liming, Maidstone, Northfleet, Otford, Petham, Reculver, Saltwood, Teynham, Westgate, Westhalimote, Wrotham, and Waltham."—(xii. 547.)

These manors with their demesnes, &c., were held by barony, and in the hands of under-tenants by knight-service.

to propagate the notion that all land in Kent is gavelkind.

Many estates held by a military tenure at first were afterwards converted into sergeanties, and were thenceforth held in socage.

In the same way we have seen that more than a hundred estates held by the military services of castleguard were changed into a tenure by rent-service to guard the castles. By this change in most cases they became socage.

Thus the number of estates actually held by knight-service was continually decreasing, for the same change was being carried out in other ways at the same time. Although nothing can be clearer than that a conversion of a military to a socage tenure in historical times has no effect at all in making the land gavelkind, yet it is easy to see that an increasing difficulty may have arisen in distinguishing between the socage which is gavelkind, and the socage which is not.

CHAPTER XI.

Tenure in Francalmoigne.

Francalmoigne at the Conquest.—Distinction between this tenure and Gavelkind.—Grants in perpetual alms of Gavelkind lands.—General rule.—Escheats to a Lord holding in Francalmoigne.—Borough of Stokenbury.—Present limits of the tenure.—Alienation in fee-farm.—Creation of a new socage tenure.—Case of the Manor of *WEST-WELL*.—Early notices of the tenure.—Suit of *De Bendings* v. *Prior of Christchurch*.—Real nature of the claim.—Charter of Edward the Confessor.—Remarks on the case.—Opinion of Somner.—Confusion between Socage and Francalmoigne.—Manor of *LITTLE CHART*, *SEXTRIES*, *LINSORE*.—Manors originally in Francalmoigne cannot become Gavelkind.—*SHELDWICH*, *WAREHORNE*.

We may now turn to the history of those numerous estates in Kent which anciently were held in free alms or francalmoigne.

An earlier chapter shewed the opposite nature of tenures in francalmoigne and gavelkind before the Conquest. The one was socage, the other "free from all earthly service," the highest among the high allodial tenures. It was shewn also that in each manor owned by the Church the demesne lands were held in free alms allodially, and the tenemental portions alone charged with socage rents and services.

When the English feudal system was perfected, by far the larger portion of the allodial lands of the Church was rendered liable to military service. After this time the prelates and monasteries held their demesnes for the most part by barony or knight-service, so that there is no need here to recapitulate the arguments for the freedom of such land from the customary qualities of gavelkind. To use

a common phrase, these are among "the ancient knight-service lands of Kent."

But we have now to consider the nature of those manors which were not feudalized, but left to retain their ancient freedom[a], and to remain as nearly allodial as the law would suffer, i.e. to be held *in capite* in francalmoigne.

Of the Church lands held in Kent by the Archbishop of Canterbury, the Bishop of Rochester, the Abbots of St. Augustine, Battle, and Ghent, and the Priors of Canterbury and Rochester, all but the estates of the priors last named were feudalized in the manner above mentioned. Even the lands of these priories were included by the Domesday commissioners in the baronies of the archbishop and bishop respectively; those of the Prior of Christchurch were entered under the title of *terra monachorum Archiepiscopi*, the others under *terra episcopi Roffensis*.

But we have also seen that shortly after the completion of the Survey an ancient practice was revived, and the estates of the priories were separated from those properly belonging to their respective sees, and the monasteries obtained permission to retain their ancient tenure of francalmoigne. This was now a *tenure* properly so called, although neither fealty nor temporal services were reserved*, for since the Conquest all lands and tenements are holden either mediately or immediately of the Crown; but the tenure is as nearly allodial as is possible, and as free from feudal services or their modern equivalents as in the ages before the Conquest. The opposition between the natures of francalmoigne and gavelkind is still as marked as ever.

* Co. litt. 1 b, 94 b.

Of the whole mass of *allodium* in Kent, part was burdened with new services, and in some cases, a little later,

[a] "Francalmoigne est le pluis haute service."—(*Co. litt.* 95 a.)

with new rents-service; yet this did not make the land gavelkind: *a fortiori*, therefore, the part which was left as free as before could not become so converted.

But after all, the simplest argument arises from the legal definitions of the words gavelkind and francalmoigne, nor would any arguments be required, if some of the treatises on the subject had not changed the general rule into the narrow maxim, that "ancient knight-service is inconsistent with a gavelkind tenure," instead of saying that "nothing is gavelkind which was not originally socage." It will be shewn briefly how this confusion in most cases arose.

Meanwhile we know that *ex vi termini* lands held in ancient francalmoigne are free from temporal service, and therefore from all *certain* service, whether fealty or payment of rent. Indeed the very reservation of the smallest rent destroys the freedom of the tenure[b], "for none can so hold if there be expressed any manner of certain service that he ought to do *."

* Co. litt. 96 b.

In the same way gavelkind *ex vi termini* implies fealty, rent-service, and an ancient power of distress in the lord

[b] See Ail. 13 Hen. IV. Rent reserved on a francalmoigne tenancy, and a claim made on the abbot for 10s. rent by reason of his tenure. Claim discharged because such a tenant cannot owe such a service.

"Un don en fraunkalmoign rend certain rent par an—laquel ne puit estre dit fraunkalmoigne."—(*Fitzh. Mesne*, 109. See also Mic. 4 Edw. IV. 35.)

Since the Reformation the uncertain spiritual services have been in some cases changed to certain spiritual and charitable services, but this does not affect the main argument.

"Albeit the tenure in francalmoigne is now reduced to a certainty, yet seeing the original tenure was in francalmoigne, and the change is by general consent by authority of parliament, whereunto every man is party, the tenure remains as it was before."—(*Co. litt.* 95 b.; 2 Edw. VI. c. 1; 1 Eliz. c. 2, 12 Car. II. c. 24.)

of the manor. In other words it is socage, and therefore Robinson "confined the description of gavelkind lands to lands originally of socage tenure."

Thus Somner also, in defining the true sense of the word gavelkind, as that land for which rent was anciently paid by the freeholder to his lord, desires his readers to observe that besides the ancient socage tenures there were in Kent "divers sorts of land by the nature of their tenure *not censive* or *censual* (rent-paying), nor of the kind to pay 'gavel,' i.e. such rent-service as arises from ignoble and plebeian tenures with which alone 'gavel' is conversant; those lands namely held *in allodio*, *in francalmoigne*, in knight-service, in frank-fee [c], and the like *."

* Somn. Gav. 35; Harris, Kent, 459.

And in another place he shews that the words "*tenendum in gavelkind* could not have consisted with a tenure in francalmoigne, which excludes the return of all but divine services and burdens †." (In another place he confuses socage with francalmoigne, as will be shewn later.)

† Somn. Gav. 41.

For these reasons we find in the report of the Real Property Commissioners the following question, answered by an eminent authority on Kentish tenures (Mr. Bell):—

"Are there not some estates in Kent which were never gavelkind?

"There is one description of land on which the question has arisen, viz. monastery lands, which were not held in gavelkind but in free alms."

The rule, then, which is now to be illustrated, may be thus expressed:—

All manors, and therefore all demesne lands, advowsons, and rents-service appendant to the seignory, which were origi-

[c] "Frank-fee" in Kent usually means all that is not gavelkind; when used as above in a more limited sense it appears to mean free land converted into socage before the Act 12 Car. II. c. 24.

nally held in francalmoigne, are now held in a tenure superior to gavelkind, and are descendible at common law.

Taking all the lands in Kent which have been held in this spiritual tenure, we find that they are thus divisible:—

1. Those still held in the original francalmoigne tenure.

2. Those which were originally so held, and at or before the dissolution of monasteries were given to laymen to hold either in socage or by knight-service.

3. Ancient knight-service lands given in free alms between the Conquest and the Reformation.

4. Ancient socage or gavelkind land acquired by tenants in free alms.

It will be convenient to dispose first of the class last mentioned, as being least important.

Gavelkind land might be acquired by the tenant in free alms either by gift or by escheat. In the first case the land retains its customary qualities in the hands of lay tenants, although they would naturally have been suspended while in the ownership of the ecclesiastical corporation[d].

In the same way, if the king becomes seised of gavelkind land *jure coronæ*, the customary qualities are suspended, not destroyed.

No custom inherent in the land can be destroyed by a change of tenure.

In the second case of an escheat of gavelkind land to the lord of the manor, being a tenant in francalmoigne, the same rule of law is maintained.

It has been said that a contention was anciently raised, that such an escheat to a lord holding by knight-service destroyed the gavelkind customs. The Kentish Custumal only mentions lords of manors held by military service

[d] *Lushington* v. *Llandaff*, 2 New Rep. 491.

("a seigneur que tiene per fee de hawberke ou per serjauncye"); but the words of another record of precisely the same date are general enough to include escheats falling to a lord holding by *any* of the superior tenures.

In the assizes held at Canterbury in 21 Edw. I., before John de Berwick and the other justices, it was found "by a jury of the body of the county," that "when gavelkind land escheats to the lords of the fee the tenure is changed: and in like manner when the land is given back into the hands of the lord, the services being too heavy for the tenant, without any expectation of recovering them ('quando redduntur in manus hujusmodi dominorum præ nimio onere servitiorum sine spe ipsa rehabendi'); but if the lord should give them back on any conditions, the land shall be gavelkind again, and any lord may release the services of a tenant, and yet the lands remain partible according to the custom of gavelkind[a]."

Robinson further quoted from "an ancient book of 4 Edw. II., in a *nuper obiit*, that if lands, which have been departible and departed come to the lord by escheat, they shall not be partible in his hands," or in those of a purchaser from him ("vel in manibus alicujus alius perquisitoris non possunt partiri").

But it has long been settled that the unity of possession by any lord (whether holding in francalmoigne, in chivalry, or in socage) "cannot hurt the customs of gavelkind[*]." [*] Keilw. 80.

And in the customary process of gavelet, when practised, the land did not lose its customary qualities according to the later interpretation of the law; although the Kentish Custumal asserts that "the lord shall hold the land as part of his demesnes."

[a] *Itin. Kanc.* 21 Edw. I. 35, and Hil. 26 Edw. I. 21, B. R.

It has been, however, held that the customs of gavelkind will be suspended while the land is so held. In the same way it was once doubted whether, where the lord of a manor purchases customary copyhold land within the manor, the customary descent will remain. But the current of later opinions has decided that no change of tenancy can interfere with an ancient custom, which has grown into the land itself.

It is therefore clear that ancient socage lands in Kent, acquired in any manner by a tenant in francalmoigne, did not thereby lose the qualities of gavelkind. From which it as clearly results that the mere ownership of a tenant in francalmoigne is no bar to the common presumption, that the land lying in Kent is gavelkind till the contrary is proved; and the tenure in francalmoigne must be *ancient* that the presumption may be rebutted, i.e. more ancient than 18 Edw. I., the latest date at which this particular tenure could be created, except by the Crown: more ancient even than the reign of Richard I., the time of legal memory, for the title must be taken back to the date of the Conquest, when the privileges of gavelkind were confirmed. This can be done by the help of Domesday Book in almost every case of importance.

Gavelkind land granted in francalmoigne owed no service; but services of several kinds are implied by the word gavelkind. The answer to this apparent contradiction may be found in Littleton:—

"And note, that where such man of religion holds his tenements of his lord in francalmoigne, his lord is bound by the law to acquit him of every manner of service which any lord paramount will have or demand of him for the same tenements; and if he doth not acquit him, but suffereth him to be distrained, &c., he shall have against his lord his writ of mesne, &c.*

* Litt. §. 142; Co. litt. 99 b; F. N. B. 135.

"And not of *services* only, as fealty, homage, rent-works, &c., but also of improvement of services; as if he (tenant in francalmoigne) were distrained for relief, *Aid pour fille marier, Aid pour faire fils chevalier*," &c.

It is for this reason that we find none of the francalmoigne lands of Kent charged to the Exchequer for the aid levied in 20 Edw. III., towards making the Black Prince a knight, as were all the military lands in the county.

We now come to the consideration of lands which were anciently and originally held in francalmoigne, and which are now held in that tenure, or have come into the hands of laymen. These, it has been said, cannot now be gavelkind. It is of course understood that only the demesnes are here described, and not the ancient socage portions of the manors belonging to the Church.

It is found in some cases that an estate of socage lands, with nothing reserved in demesne, is separately described in Domesday Book as having been held of a francalmoigne manor. Here, of course, the whole was gavelkind, according to the rule laid down. An example of this kind is afforded by the case of "the borough of Stokenbury," in the manor of Eastfarleigh and parish of East Peckham. It was thus described in Domesday Book among the lands of the Bishop of Bayeux: "Ralph, son of Thorold, holds of the bishop half a suling in Stokenbury. In the reign of Edward the Confessor two free men (*liberi homines*) held it, as now."

It might be contended that the ownership of these free men is not conclusive as to the gavelkind tenure; they might be, and were probably "drengs," or lesser thanes. But it will be observed that nothing was held in demesne by the bishop's tenant, and therefore we find that "*all*

the lands in this borough pay quit-rents," i.e. are gavel-
* Hast. v. 102. kind *.

At the dissolution of the monasteries the king resumed all the francalmoigne tenements of the smaller monasteries, and of the two great priories of Christchurch in Canterbury, and St. Andrew's in Rochester. Immediately afterwards he granted a great portion of the lands and tenements so resumed to the Deans and Chapters of his newly constituted Cathedrals of Canterbury and Rochester, to hold as before in francalmoigne (*in puram et perpetuam eleemosynam*). The services due to him, his heirs and successors, were somewhat changed; instead of prayers for the souls of the donor's family and successors, the tenants are bound to carry out the donor's charity, by performing divine service, educating children religiously, and dispensing alms to the poor. The burden of the *trinoda necessitas* was laid upon the tenants according to the old law; they were therefore bound to contribute from their revenues to the building and repairing of roads and bridges [f].

The manor lands and tenements thus given, which had been held in francalmoigne by the monasteries of Christchurch and St. Andrew, are thus held as freely as the former tenants held them at the time of the Conquest, and

[f] "Ut in posterum ibidem sacrorum eloquiorum documenta et nostræ salutiferæ redemptionis sacramenta pure administrentur, bonorum morum disciplina sincere observentur, juventus in literis liberaliter instituatur, senectus viribus defecta . . . rebus ad victum necessariis condigne foveatur, ut denique eleemosynarum in pauperes Christi elargitiones, viarum pontiumque reparationes, et cetera omnis generis pietatis officia illinc exuberanter in omnia vicina loca longe lateque dimanent . . . dedimus et concessimus, &c. habendum tenendum et gaudendum . . . decano et capitulo Ecclesiæ Cathedralis et successoribus suis in perpetuum tenenda de nobis heredibus et successoribus nostris in puram et perpetuam eleemosynam." —(*Letters Patent granted to the new Cathedrals*, 31 Hen. VIII.)

can have had no customary qualities superadded to them by the grant just quoted. In case, then, any of these estates should at some future time be separated from the cathedral possessions by sale, exchange, or any other means, it will be sufficient for the lay owner to shew the free tenure at the Conquest by an extract from Domesday Book, and at the foundation of the cathedrals, by a reference to the particulars of the Letters Patent just mentioned. It is of more importance to our present inquiry to consider those estates which, either before or at the dissolution of the monasteries, were aliened by the tenants in francalmoigne to laymen, or resumed by the Crown.

The most usual courses of such alienation before the dissolution of monasteries were these: either the land was aliened to a tenant in fee simple, reserving a fee-farm rent, or to a like tenant in consideration of military services, or it was exchanged with the Crown for other lands. As a general rule the tenants in francalmoigne might not aliene their lands without very special license[g]; but the Kentish tenants, of whom we are speaking, were found in the reign of King John to have possessed the privilege from time immemorial[h].

The first mode of alienation mentioned must have been used before 18 Edw. I. to be legal, the statute *Quia Emptores* forbidding any one to aliene land to be held of the alienor and his heirs.

The effect of the alienation was to create a new socage tenure by fealty, "being the lowest and least tenure the law can create, because fealty is incident to every tenure

[g] Magna Charta, 9 Hen. III. c. 36, 18 Edw. I. c. 1; Book of Entries, 119; Mic. 45 Edw. III. 118; 24 Edw. III. 71; Dyer, 109.

[h] *Abbrev. Placit. Coronæ*, 56, Pasch. 9 Johan. 2. Cant.

but francalmoigne: and the law, according to equity and justice, gives this fealty to the lord of whom the land was before holden*." In the same way a transfer of the seignory converted the tenant in francalmoigne into a tenant in socage owing fealty.

* Co. litt. 98 a, 99 b.

There is a very early case, which shews not only generally that lands originally held in francalmoigne were not gavelkind, but also specially that an early conversion of the tenure into *socage* would not change the tenure to *gavelkind*, either in the hands of the alienee, or afterwards if resumed by the original tenant.

The case has been mentioned by Ducange (title, 'gavelkind') and by Robinson in the "Treatise on Gavelkind." A copy of the proceedings had previously been taken by Somner† from the archives at Canterbury, to which Hasted refers in his history. This copy, however, was inaccurate in certain particulars, and was not besides received as a primary authority. It has therefore been thought better to extract the whole case from the original record, the writer having had occasion to procure an office copy of it.

† Gav. Append. 177.

The upshot of the claim made will be seen to have been the same as was put forward and refuted in *Gouge* v. *Woodin*, cited above, viz. that an early change to socage converted the land into gavelkind.

It has also been thought expedient to add other early notices of the land in dispute, which serve to explain some points in the history of the manor, which were not made clear by Hasted and other historians.

The property in dispute consisted of the manor of Welles, or Westwell, and certain lands within it.

Before the Conquest this estate had been given to the monks of Christchurch, Canterbury, in francalmoigne, and

was therefore *allodium* or "thane-land," as opposed to gavel-land or gavelkind, as shewn in the earlier chapters.

"By whom or when it was given I have not found," said Hasted: it is, however, mentioned in Edward the Confessor's deed of confirmation above described, among the other estates given in free-alms to that Church by different kings and nobles[1].

It was thus described in Domesday Book under the title of "Lands of the Monks of the Archbishop:"—

"The Archbishop holds Welles. In the time of Edward the Confessor it was taxed for seven sulings, but now for five. There are eighteen ploughlands of arable, four in demesne, and twenty-one *villani* with five husbandmen hold twelve and a-half, &c."

On the division of the estates of the church of Canterbury, between the monks and the archbishop, this estate fell to the share of the former, being held by them *ad cibum*, i.e. for the use of their refectory *. * Hast. vii. 413.

"Their title," said Hasted, "seems to have been very precarious, for it was continually contested." This is not quite a correct way of stating the facts, as will be seen from the following brief account of the transactions to which he alludes.

[1] "Carta regis Edwardi Confessoris de terris in Chertham confirmans Ecclesiæ Christi omnes terras quas ante contulerant reges episcopi comites magnates. . . . Sequuntur terrarum nomina (ex quibus quædam erasa)." —(*Cotton. MSS. Claud. A.* 3, 5, *copied in Kemble's Codex Diplomaticus, and Ellis' Dugd. Mon.* i. 99.) The deed in the British Museum is the original, signed by the king. The names of manors in the schedule which still remain legible include among others Sandwich, Eastry, Thanet, *Adisham*, Chartham, Godmersham, Westwell, East Chart, Great Chart, Werehorne, Apledore, Mepham, Cowling, Farningham, Holingborne, East Farleigh, and East Peckham.

It has been mentioned before that the freedom of the tenure of Adisham became proverbial, the letters L. S. A. (*liberum sicut Adisham*) denoting a perfect tenure in francalmoigne.

It appears that the Prior of Christchurch in very early times aliened this manor with its demesnes in fee-farm to an ancestor of one Matilda de Westwell, to whom the inheritance descended (*cujus hereditas manerium illud fuit*). The prior retained the seignory of the manor, as was legal, until the statute *Quia Emptores*, 18 Edw. I. Such an alienation by a tenant in francalmoigne converted the land into socage *, as we have already noticed.

* 9 Co. 123; Co. litt. 98 a.

This Matilda de Westwell married Robert de Valoignes, *dominus de Sutton*, and died, leaving issue one son, Peter, named *de Bending* from another estate. During his minority he remained in his father's wardship; the latter held the estate of his late wife as tenant by the curtesy of England, and paid the fee-farm rent to the Prior of Christchurch as superior lord of the fee, thereby acknowledging his title subject to the newly-created tenure in fee-farm.

This appears not only from the legal proceedings below recounted, but from an entry in the Close Rolls, 17 Johan. m. 6 [k], to this effect.

"The king to Hubert de Burgh, high justiciary of England, &c. We command you to pay to the prior and monks of Christchurch, Canterbury, their fee-farm rent from the manor of Welles, now in our hands by reason that Robert de Valoignes, their tenant of that estate, is in rebellion with our enemies; notwithstanding this let them have the rent, though Robert de Valoignes himself be with our enemies [l]," &c.

[k] p. 254 of the volume of extracts published by the Record Commissioners.

[l] Rot. Claus. 17 Joh. m. 6: "Rex Hub. de Burgh justiciario Angliæ, &c. Mandamus vobis quod habere faciatis Priorem et conventum S. Trinitatis Cantuar. firmam suam de manerio de Welles, quam tenetis in manu nostrâ eo quod Rob. de Valoignes qui fuit eorum firmarius ejusdem villæ est cum inimicis nostris, et nihilominus illam eis habere faciatis licet ipse Robertus cum eis fuerit. Teste me ipso apud Colchester xix. die Martii."

This Robert de Valoignes was restored to favour early in the next reign, as appears by the Close Rolls of 9 Hen. III., but does not appear to have been restored to his tenancy of Westwell thus forfeited; and in 8 Hen. III., his son Peter de Bending, the heir in remainder, released all his rights in the matter to the Prior of Christchurch, "for which they gave him a sum of money and their manor of Little Chart in fee-farm as therein mentioned[m]."

Three years afterwards another Kentish knight, Stephen de Harengod or Heringod, claimed to hold this manor in fee-farm by a writ of right in the King's Court[n], but released all his claims in the same way in consideration of receiving thirty marks in silver.

By virtue of the forfeiture of the estate of the tenant for life, and the releases given by the other persons claiming an interest in the estate, the prior and monks held Westwell in peace, until, in 1241, a writ of dower was brought by Burgia, widow of Peter de Bendings, claiming one-half the manor as her free-bench or dower *in gavelkind.*

"*Pleas of the Crown in divers counties, Trin.* 25 *Hen. III.*, r. 49.

"Burgia, the widow of Peter de Bendings, claims against the Prior of Christchurch a moiety of the manor of Westwell as her free-bench according to the custom of gavelkind, of which manor she had been endowed by her late husband.

"And the prior appeared and said, that she could not claim a moiety of the said manor as her customary free-bench or dower, because he himself holds that manor by virtue of a gift from the

[m] "The original deed is in the Surrenden library, with the seal annexed, on which is the legend *Sigil Petri de Bendingies.*"—(*Hast.* vii. 414.)

[n] Rot. Claus. (p. 205) 11 Hen. III. m. 25 *in dorso:* "Stephanus Haringod attornat Johannem de Hokering contra Priorem S. Trinitatis Cantuar. de manerio de Welles."

king's predecessors, who once held the manor in their own hands, and who gave it to God and the Church of the Trinity (in Canterbury) as freely as they held it themselves in pure and perpetual alms (francalmoigne) *."

* Co. litt. 94 b.

"So therefore the manor had never been parted and was not partible, because the king, who gave it to his (the prior's) predecessors, had not held it as gavelkind [o]."

"The demandant then asserted that the manor was partible and held in gavelkind. Wherefore one Robert de Valoignes, the husband of Matilda de Welles, to whom this manor had descended as heiress, after the death of his said wife held *one moiety* of it as his free-bench (or curtesy) by the custom of gavelkind.

"And Peter her late husband held *the other moiety* (as heir to his mother).

"Moreover she said that her kinsman, H. Bellet, on her marriage had purchased with his own money the life-interest of Robert de Valoignes in the moiety first-named for the benefit of herself and her said husband (so that he had acquired the whole manor).

"And the tenant, the prior, said on the other hand, that the manor was not gavelkind, and not partible, and that Robert de Valoignes had not held a moiety as his customary free-bench or curtesy [p]."

[o] "Placita coram Rege in Divers. Com. Trin. 25 Hen. III. Rot. 49." In which are found "Placita et Assisæ Captæ apud Cantuar. in com. Kanc. in Octav. S^a^. Trinitatis anno regni Regis Henrici fil. Johannis xxv^to^. Coram W. de Ebor Præposito Beverley et sociis suis."

Memb. 10, Calehull. "Burgia quæ fuit uxor Petri de Bendinges petit versus Priorem S^a^. Trin. Cantuar. medietatem manerii de *Westwell* ut francum bancum suum, &c. Et unde prædictus Petrus eam dotavit, &c. Et Prior venit et dicit quod ipsa non potest petere medietatem prædicti manerii nomine franci banci quia dicit quod habet manerium illud de dono præcessorum domini Regis qui manerium illud aliquando tenuerunt in manu suâ, et qui illud dederunt Deo et Ecclesiæ S^a^. Trinitatis adeo libere sicut illud tenuerunt in puram et perpetuam eleemosynam. Ita quod nunquam manerium illud postea partitum fuit nec est partibile. Quia dicit quod dominus Rex qui manerium illud dedit prædecessoribus suis non tenuit illud nomine Gavelkindeis."

[p] "Et Burgia dicit quod prædictum manerium *Gavelikind* et partibile

The matter was referred to a jury of knights, not gavelkind tenants, who delivered the following full verdict in favour of the monastery:—

1. That the property in dispute was anciently "a free manor" (*liberum manerium*) belonging to the predecessors of the king.

2. That it had been given in francalmoigne to God and the Church, so that it was never gavelkind, never parted and not partible.

3. That the said Robert de Valoignes had never held a moiety of it as his customary free-bench; on the contrary, upon his wife's death he had held the whole as tenant by the curtesy at the common law, together with the wardship of their son Peter de Bendings.

4. That the sum of money paid by Bellet as aforesaid was paid in consideration of getting the wardship of the heir from his father. Therefore the prior was confirmed in his ownership[q], &c.

est. Ita quod quidam Rob. de Valeines qui duxerat in uxorem Matilda de Welles, cujus hereditas manerium illud fuit, post mortem ipsius Matildæ habuit nomine franci banci medietatem illius manerii, et Petrus vir ipsius Burgiæ habuit *aliam* (illam, *Somner wrongly*) medietatem. Ita quod Harveus Bellet consanguineus ipsius Burgiæ postquam idem Petrus desponsaverat ipsam Burgiam redemit illam medietatem per denarios suos de prædicto Roberto ad opus ipsorum Petri et Burgiæ. Et quod ita sit offert domino Regi xx^{s} per sic quod inquiratur, &c.

"Et Prior dicit quod prædictum manerium non est Gavelikind, nec partibile, nec prædictus Robertus unquam habuit ibidem medietatem prædicti manerii ut de franco banco suo, et quod ita sit ponit se super patriam. Et ideo fiat in juramentum."

[q] "Juratores de consensu, etc. veniunt et dicunt super sacramentum suum quod prædictum manerium fuit quondam manerium liberum prædecessorum domini Regis et quod datum fuit Deo et ecclesiæ S. Trin. in liberam puram et perpetuam eleemosynam. Ita quod manerium illud nunquam fuit Gavelkind nec partitum fuit nec est partibile. Nec prædictus Robertus unquam habuit medietatem prædicti manerii nomine

There are several points in this case which require notice, besides the broad conclusion.

1. Robinson mentions the case in his chapter on tenancy by the curtesy, but only to notice the claim to a moiety without any mention made of children by the marriage. The form of the plea corroborated his just opinion that the widower is entitled to his customary estate by curtesy, or free-bench, whether issue were born of the marriage or not. In the latest edition of Robinson's treatise Somner's copy of the case is extracted in an editorial note. A doubt is expressed whether the finding in *Doe dem. Lushington* v. *Llandaff* does not contradict the position respecting "ancient francalmoigne tenure." This will be shewn to be groundless when the last-mentioned case is discussed later in this chapter. It is a doubt which was not felt by Robinson for the simple reason that he had already defined gavelkind to be ancient socage and nothing else, and francalmoigne cannot be socage. It may seem at first sight strange that he should not have enlarged upon a case which is important enough to affect the titles of several estates, were an endeavour to be made to dispute its conclusion. We may, however, remember that he was writing very specially of gavelkind lands in Kent, not of the lands which were never gavelkind. Further, that the authority of the case had never been called in question, nor was there even an authorized record of it, so that there was no reason to discuss its validity. There are two other things to be remembered. First, that when Robinson's treatise

franci banci. Sed dicunt quod post mortem prædictæ Matildæ tenuit idem Robertus totum manerium cum custodiâ prædicti Petri. Ita quod prædictus Herveus dedit ei quandam summam pecuniæ pro custodiâ illâ. Et ideo consensum est quod Prior teneat sine die. Et Burgia in misericordiâ pardonatur."

was written (to use his own words) "it was a common mistake among strangers to the county that there now remains in it but little land of the nature of gavelkind;" whereas now it is generally assumed that the whole of Kent is subject to the custom. But the most that this eminent writer asserted was this: "I believe I should not seem much mistaken, were I to assert, that there is now near as much land in Kent subject to the control of the custom, as there was before the disgavelling statutes were made." Secondly, he does not even go into the question of the extent of lands held in Kent by ancient knight-service, but on the reading of a record of the date of 18 Edw. II. and of the Stat. 18 Hen. VI. 2, assumes that very little land in Kent was ever held by military service, and that "well-nigh all was of the tenure of gavelkind." It will be shewn in the next chapter how far this conclusion was accurate.

2. As to the plea that "the manor was not partible because the king, who gave it to the prior's predecessors, had not held it as gavelkind, (*nomine gavelkind*)." It has been shewn in the earlier chapters that *allodium* held before the Conquest by the Crown or the Church was of the very opposite nature to that of gavelkind. Such is the true meaning of this plea. Somner, however, drew from it "this double consectary (admitting the plea for law). That the king may hold land in gavelkind. That the king holding land in gavelkind, in case he grant it to any religious house in francalmoigne, it remaineth notwithstanding partible as before it came to the Crown, in their hands at least, whom the religious men enfeoffed with it*." It does not appear that he knew the gift to Christchurch to have been made before the Conquest.

* Somn. Gav. 150.

3. The jury found that the estate in dispute had an-

ciently been a *free manor* (*liberum manerium*) in the possession of the Crown. Somner's copy of the proceedings omits the word "liberum," which is important. Not that we know of the kings before the Conquest possessing any "gavelkind manors," which seem to have been created out of ancient socage lands between the introduction of the feudal system and the enactment of the Statute *Quia Emptores*, and not afterwards or before. But the words "free manor" point to the fact that Crown lands at that early period were allodial, like those of the Church, and therefore not gavelkind. The finding of the jury that the manor once belonged to the Crown is somewhat remarkable, from the fact that no evidence has been preserved at Canterbury of the date of the donation or the name of the donor. The gift is simply confirmed, without specifying particulars, by the Charter of Edward the Confessor.

4. Somner moreover, not being a lawyer[r], did not comprehend the full bearing of the case, which he had extracted from the archives. He did indeed "admit the prior's plea for law*," and he himself distinguished gavelkind from francalmoigne very effectually in the passages lately quoted. Yet in other places he shews that he was puzzled by the erroneous idea that every tenure must be either socage or knight-service, a broad division which is perfectly correct as to *lay*-tenures, "but leaves still behind the other species, of a *spiritual* nature, namely, francalmoigne†."

* Gav. p. 150.

† Steph. Blackst. i. 226.

Among the tenures which are "species of socage, or land

[r] See the conclusion of his treatise: "Many other things offer themselves to his discourse that would treat of gavelkind to the full, but they are (I take it) mostly points of common law, which because they are not only out of my profession, but beside my intention too, I will not wade or engage any further in the argument."—(*Gav.* 170.)

said to be of socage kind," Somner appears to have included francalmoigne. "It is quit of all service whatsoever, as well spiritual (unless uncertain) as temporal. But because it had not to do with military service on the one hand, so neither with villenage on the other, and hath its privilege expressed in that epithet of *libera*, it is referred to socage as in some sort such *." In another place he refers to "that dichotomy of chivalry and socage tenures" by which the lands of all common persons in England may be distributed †.

* Somn. Gav. 142.

† Ibid. 36.

He appears to have been thinking of the passage in Fleta*, on which Littleton grounded his remark that "every tenure which is not tenure in chivalry is a tenure in socage ‡." "*Here*," said Coke, "*he meaneth temporal services and not francalmoigne, as by the examples he put is manifest*, and as in the proper place shall appear more at large §."

‡ § 118; Co. litt. 86 a.

§ Co. litt. 97—100.

This confusion in Somner's mind between socage and francalmoigne, the most opposite of tenures, clouded all the conclusions drawn by him from the case above extracted, and prevented him from setting out the simple rule that nothing can be gavelkind which was not anciently held in socage.

The manor and demesnes of Westwell remained after the decision above cited in the ownership of the prior and monastery, without any further claim made by the families of the former tenants. In the roll of proceedings *De Quo Warranto*, taken 7 Edw. I. and 21 Edw. I. (and lately published by the Record Commissioners), Westwell appears as one of the

* "Ex donationibus autem, feoda militaria vel magnam serjantiam non continentibus, oritur nobis quoddam nomen generale, quod est socagium." —(*Fleta*, i. c. 8, and iii. c. 14; *Dalrymple, Feuds*, 37; *Wright, Ten.* 211; *Somner, Gav.* 35, 37, 38, 40, 47, 114, 150, 178.)

numerous manors in which the prior had the ancient franchises which had been enjoyed by tenants in francalmoigne from a period long preceding the Conquest[t]. He had also the right of free-warren over all his demesne lands, which was confirmed by charter in 1 Edw. II. After the dissolution the estate was granted to the Archbishop of Canterbury to hold by knight-service *, but was resumed by Queen Elizabeth by virtue of a private Act of Parliament in her third year. The ownership continued in the Crown until it was finally alienated to private persons in the fourth year of Charles I.

* Hast. vii. 415.

The manor of Little Chert was, as above mentioned, granted in fee-farm to Peter de Bendings. It was therefore held in socage by him and his heirs, though the superior lordship was still in francalmoigne. The manor is still held by these tenures †. Even an alienation by tenants in francalmoigne dating soon after the Conquest did not make the land gavelkind, but only socage descendible as at common law [u].

† Ibid. 457.

[t] *Placita de Quo Warranto*, 325. The prior was found to have enjoyed from time immemorial "soc and sac on strande and stream, in wood and field," infangthief, freedom from toll, jurisdiction over villeins and other tenants, freedom from land-tax, the right of imposing fines for a long list of offences, freedom from payments in lieu of military service, and other extensive privileges.

[u] A very ancient instance of this is given by Hasted in his account of an estate named Sextries in Nackington.

"This was part of the ancient possessions of St. Augustine's Abbey. It was demised in the year 1046 to Turstin, one of the abbot's household, and was afterwards sold and alienated from the monastery, which accounts for its not being mentioned in Domesday Book. But in the reign of Edward I. it appears by the roll of knights'-fees to have been again in the possession of the abbot, for Natindon is mentioned as his lordship." —(*Hast.* ix. 293.)

The entry in the *Testa de Nevil* is important only thus far. Here was an estate once held in francalmoigne, then alienated about the time of the

The following is another instance of an ancient francalmoigne estate alienated and afterwards declared not to be gavelkind.

The manor of Sheldwich was given to the monks of Reculver in very ancient times "free from all earthly payment," excepting only the *Trinoda Necessitas*,—or in other words, to hold in francalmoigne. Shortly before the Conquest the estates of this monastery were given to Christchurch in Canterbury, but there is no special record of this manor in its archives. Hasted wrote that he "had not seen how the manor passed afterwards until the time of its becoming the property of the family of At-Lees in the reign of Edward I.*" There are, however, earlier notices of its tenure.

* Hast. vi. 483.

In 26 Hen. III. the Abbot of Faversham was summoned for requiring Roger Malmains to swear fealty to him for the manor of Sheldwich, in the way prescribed for socage and gavelkind tenements. The abbot maintained that his demand was just, and insisted that Roger Malmains, as well as his father then deceased, had held the said manor and lands in gavelkind, ("tenuerunt prædicta tenementa de eo in Kavelicunde"). A jury was impanelled to try the question, who found that the manor of Sheldwich *was never gavelkind*, but was then held by knight-service at common law[x].

Conquest, and then entered (so far as the seignory was concerned) among the estates which were descendible at common law. The *land* seems to have been gavelkind, and the manor has now ceased to exist.

Linsore, an estate belonging to the abbey, and situated in Upper Hardres, was alienated *before* the completion of the Domesday Survey, at a fee-farm rent, and therefore became socage, in the same way as the estates in L. Chart and Westwell, just mentioned, and was so held of the abbot till the reign of Henry VIII. (Hast. ix. 307.)

[x] Pleas of the Crown, 26, 27 Hen. III. r. 16, 21.

Another illustration of the rule (that these ancient francalmoigne lands are not gavelkind) appears in the history of the manor and demesnes of Warehorne, in the parish of the same name.

This estate was given to the monks of Canterbury in francalmoigne, A.D. 1010, and was accordingly entered in the Domesday Survey under the heading "Terra Monachorum Archiepiscopi." It is there described as one suling of arable land, of which half was kept in demesne, and half distributed among the socage tenants.

Some time afterwards this estate ceased to be held in francalmoigne, and became "lay fee." But like the manor of Westwell and the others mentioned in this chapter, it did not thereby become descendible as gavelkind. On the contrary, it is recorded continuously from the reign of King John to that of Henry VIII. to have been among the military lands descendible at common law[y], and did not become socage before the passing of the general statute 12 Car. II. c. 24.

[y] Hast. viii. 367. Held by knight-service of the archbishop in 12, 13 John, *Testa de Nevil;* Red Book of the Exchequer, p. 132; *Inq. post mortem*, Richard de Bedford, 17 Edw. I. 20.

CHAPTER XII.

Tenure in Francalmoigne (continued).

Case of *Lushington* v. *Llandaff*.—Tithes of *RODMERSHAM*.—Advowson of *UPCHURCH*.—Manors of *GORE, DENSTED, KINGSDOWN, POLTON*.—Ecclesiastical Corporations holding lands by Military Service.—*CANONS' COURT*.—Rectory of *TOWN SUTTON*.—Manor of *HONICHILD, RIVER, WEST LANGDON*.—Queen Ediva's gift in Free Alms.—*MONKTON, ALDINGTON, STOWTING, EAST LENHAM, EAST FARLEIGH*.—Dispute as to Tenure.—*EAST PECKHAM*.—Absence of Quit-rents from Demesne Lands.—Tenure by Divine Service.—Somner's Theory.—Harbaldown Hospital.—Total amount of lands held in Francalmoigne in Kent.

THE case of *Doe and Lushington* v. *Llandaff**, which has already been several times mentioned, has been cited hastily by some writers as an authority opposed to the rule laid down, that no land is gavelkind which was originally held in francalmoigne. Even the latest editor of Robinson's treatise expressed a doubt whether the authority of the judgment in *De Bendings* v. *Prior of Christchurch* was not impaired by this modern decision.

* Bos. and P. 2; New Rep. 491.

But a very brief examination will shew that the doubt has no solid foundation, and that the reason of the older judgment is in strict accordance with that of the more modern. The application of the same rule produced different result in the two cases, because the circumstances were utterly different.

An ejectment was brought in the Common Pleas, Trin. 1807, to determine the tenure of the rectory and tithes of Rodmersham, part of the estate of the Rev. James Lushington, then lately deceased. The rest of his estate in

Tong, Bapchild, Milton, Rodmersham, Swade, Murston, Kingsnorth, Mursham, and Sevington, had previously been found to be gavelkind; but it was said that this rectory and the impropriate tithes ought not to be presumed to be of the same tenure, because the rectory had been very anciently in the ownership of an ecclesiastical corporation (the Knights Hospitallers), and therefore *might* not have been gavelkind.

We know that by the presumption of law all lands in Kent are held to be gavelkind until the contrary is proved; this proof might have been in the form of shewing that the land was held in francalmoigne at the Conquest, but nothing of this kind was shewn.

The manor of Rodmersham was part of the king's manor of Milton, and therefore of the nature of ancient demesne. There is no evidence that the inferior manor was ever anything but gavelkind, as the demesne lands of the superior manor did not extend into the parish of Rodmersham. It was therefore held with justice to be gavelkind.

The manor and all the lands within it being of this nature, it is clear that the advowson was also held in gavelkind, being of the same tenure as the demesne lands of Rodmersham manor.

It was shewn that Henry II. gave the church of Rodmersham to the Knights Hospitallers, being then a chapel dependent on the mother church of Milton*. That the knights appropriated it in the reign of Henry IV., A.D. 1408, to their preceptory in West Peckham, where they held lands by military service. That at the dissolution of the hospital in 33 Hen. VIII. the fee of the rectory of Rodmersham, with the advowson of the vicarage, was taken by the Crown, and granted three years afterwards to John Pordage, Esq., to hold *in capite* by knight-service.

* Hast. vi. 120.

But it was *not* shewn that the manor and advowson were held at the time of the Conquest either by knight-service or in francalmoigne, or even that the Knights Hospitallers had held it by the latter tenure.

Reliance was apparently placed upon the antiquity of the gift in the reign of Henry II. But it was perfectly well known in those early times whether lands were gavelkind or not, and there was no reason against giving a gavelkind manor or advowson in francalmoigne.

The military tenure created by Henry VIII. was clearly of no value in deciding the case *. It was further held by the Court that—

* Hale, Comm. Law, 254.

"The lands belonging to this rectory cannot be distinguished from other lands in Kent. The law of gavelkind is unlike other customs. *It is not good if it begins only just before the reign of Richard I.* This custom existed long before such other customs, and almost before any history of England. The real history of the custom in Kent is that the Conqueror granted to the people of Kent *their existing rights*, and permitted them to retain their ancient laws and customs. The descent by gavelkind (partible descent) was probably the rule throughout the kingdom.

"That being the case, the appropriation *in any subsequent times* of any portion of land to a religious house will not alter its nature. While in possession of the house it could go to no children, but as soon as it was granted by the Crown it must have been holden according to its ancient tenure. The custom of gavelkind then attached, and among other things a descent to all the sons equally.

"As to the question of the tithes impropriate issuing from the land, now decided to be gavelkind, it is an established notion of law that a layman was incapable of having any tithes until the dissolution of the monasteries, and till that time that tithes could only belong to the Church; it is impossible that there could be any ancient descent with respect to them. They could not descend from ancestor to heir because they could not be in the hands of any private individual. As to the tithes, therefore, they must

descend entirely to the eldest son according to the rules of descent at common law."

* Book i. c. 5.

A similar case was quoted by Robinson * from Hughes' "Abridgment:"—

"A man was seised of tithes of corn arising out of the manor of D, which is borough-English. The question was, who should have them, the eldest or the youngest son. The opinion of the Court was that the eldest should have them, because tithes do not come naturally out of the land, but by manual occupation. Also of common right tithes are not an inheritance descendible, and by the statute of monasteries only it is that they are descendible to heirs."

It will be immediately seen that the question decided in *Lushington* v. *Llandaff*, was not whether lands *originally* held in francalmoigne can be gavelkind, but this, whether lands *once* held in francalmoigne shall be presumed not to be gavelkind without further proof. And it is further to be remarked that it was only suggested that the Knights Hospitallers held this land in francalmoigne, but not proved. The case would have been the same if the circumstances had been thus narrated: "Lands were in the possession of a military tenant of the Crown in the reign of Henry II. They are not described in Domesday Book, and there is no disproof of a gavelkind tenancy: but they might not have been gavelkind when the military tenant acquired them;" and if a claim had thereupon been set up, that the common presumption as to lands lying in Kent should not apply. This is not merely a *reductio ad absurdum* of the argument used in the case, but it is the argument itself as reported. What then is to be made of this sentence in Comyn's "Digest," "Francalmoigne lands surrendered at the dissolution of monasteries are gavelkind:

see *Lushington* v. *Llandaff*"? It is clear that it is only partially true. Fully expressed the rule would read thus: '*Lands of which the original tenure is not known, or which, being gavelkind, were granted in francalmoigne*, and surrendered, &c. are gavelkind.' But lands proved to have been *originally* held in francalmoigne are not gavelkind, for nothing is of that nature but ancient socage, or what is presumed to have been such.

It is easy to find instances corroborating the principle of the decision in *Lushington* v. *Llandaff*. As for example, to shew that a *very early* ownership by tenants in francalmoigne was consistent with the customary nature of the tenement, we notice that the advowson of Upchurch (anciently called De la Gare) was granted in free alms to the alien abbey of Lisle Dieu, about A.D. 1187. This advowson must have been of the same tenure as the demesnes of the manor on which it had been appendant, for reasons stated earlier.

But we learn from the published roll of pleas *De Quo Warranto*, 362, that the manor and demesnes of De la Gare were held in gavelkind by Roger de Leybourne, who indeed disgavelled it by special permission of the king among his other lands and tenements in Hartlip, Rainham, and Upchurch, the charter of permission remaining among the Patent Rolls. Therefore the advowson which had been given in francalmoigne was held in gavelkind, and in lay hands would be partible among the male heirs in descent.

Or take the case of Densted, in the parish of Chartham. This manor was given to Harbaldown Hospital, by Hamo de Crevequer, lord of the fee in 47 Hen. III., to hold in perpetual alms*. Henry VIII. gave it to a private person to hold by knight-service *in capite*, and it has always been

* Hast. vii. 305; *Monastic.* vi. 653.

treated as gavelkind, having, according to Hasted, been divided by co-heirs male in 1773[a].

The manor of Kingsdown, by Sittingbourne, affords another example of the rule laid down in *Lushington* v. *Llandaff*. All that we know of its early history is, that Hubert de Burgh, Earl of Kent, gave the estate to the Maison Dieu at Dover in free and perpetual alms. Being granted out by the Crown in a military tenure after the dissolution of the religious houses, this estate was still treated as gavelkind, no proof of an *original* free tenure being forthcoming to rebut the common presumption. Accordingly * it was divided among co-heirs in 1781.

* Hast. vi. 114.

Mere ownership by an ecclesiastical corporation is of course no proof of francalmoigne tenure. The original grant may have well been in perpetual alms only, which, as we have seen, was consistent with the payment of gavelkind rents. Or it may have been a grant reserving military service, as the manor of Polton was given to the Abbey of St. Radigund, Bradsole, to hold by guard of Dover Castle[b] †. Several abbots and priors were tenants by castleguard rent of the same castle, and most of the Knights Hospitallers' land was held by military service.

† *Monastic.* vi. 939; Hast. ix. 445.

We cannot *assume* that any estate was held in francalmoigne, and whatever the tenure of the ecclesiastical cor-

[a] Hasted does not account for the whole of the estate. Part doubtless was held at common law if it is correctly said, that "R. Bovehatch, being convicted of *felony*, forfeited his lands in Densted." If they were gavelkind they would not have been forfeited, by the maxim, "the father to the bough, and the son to the plough." The case is different if they were forfeited for *treason*.

[b] The manor was originally in knight-service, and formed part of the barony of Hugh de Montfort at the Conquest. *No demesnes* are described in Domesday Book, therefore all the land was gavelkind. Other gavelkind lands in the same parish were granted in francalmoigne to this abbey as early as A.D. 1191.

poration may have been, the common presumption will be applied, unless proof be produced of a tenure superior to socage, and as ancient as the Conquest.

When such proof is given, the presumption falls to the ground. Else we are driven to imagine a customary tenure *created* at the time of the dissolution of monasteries, for it is manifestly impossible that the same estate should have been held from the Conquest to the Reformation in a superior and an inferior tenure (e.g. francalmoigne and socage) simultaneously.

For these reasons *inter alia* we cannot agree in the doubt expressed by the learned editor of Robinson's treatise (last edition) to this effect: "The finding of the jury in *De Bendings* v. *Prior of Christchurch*, appears to be at variance with the decision of the Court of Common Pleas in *Lushington* v. *Llandaff**." * p. 85.

The proof just mentioned may be given in different ways, either by shewing an original and continuous tenure in francalmoigne, or if that be impossible, then an original military tenure before the gift in francalmoigne. The absence of this last evidence was the cause of failure in the argument based on an early ownership of the advowson of Rodmersham by the Knights Hospitallers.

Any history of Kent will furnish instances where such proofs could be produced. Thus Canons' Court, in Watringbury, was of ancient military tenure, and was given in free alms to the Prior of Leeds in the reign of Henry III.† Again the manor of the rectory of Town Sutton, with the advowson, was originally appendant to the superior military manor of Town Sutton; and in 9 Rich. II. was granted to the same prior in francalmoigne, whose successor held it at the Reformation‡. † Hast. 114. ‡ Ibid. 378.

Another estate originally held in barony and then

granted in francalmoigne is the manor of Honichild in Hope. It was held by knight-service from the first ownership by Hugh de Montfort, at the Conquest, until it was given in free and perpetual alms to the Maison Dieu at Dover in 31 Hen. III. It follows, therefore, that the manor and demesnes are descendible at common law.

By a process between the Prior of Dover and the rector of the parish in 1318, of which the details are given to us by Hasted *, the tithes of the demesne lands of this manor were apportioned in a certain proportion still observed. This fact affords a means of measuring the exact lands which were held by ancient knight-service.

* vol. viii. 417.

These old grants of dominical or demesne tithes are often useful at the present day in determining the original limits of the demesne lands.

Thus, too, the manor of River was anciently held by knight-service. It escheated to the Crown in the reign of King John, and was divided into three parts. One-third was given in francalmoigne to the Maison Dieu at Dover, another in the like tenure to the above-mentioned abbey of St. Radigund at Bradsole, and the remaining third to Solomon de Chanuz to hold in grand sergeanty. We can deduce the freedom of the first two portions from the fact that the remaining third, called the manor of Archer's Court, was descendible to the eldest son. See inquisition *post mortem* of Solomon de Chanuz quoted above in the chapter on grand sergeanty †. One fraction of a divided *manor* cannot be held at common law and the rest in gavelkind, though the manor and its included lands may be of different natures.

† Hast. ix. 488.

The manor of West Langdon (anciently called Monks Langdon) was held originally by the military tenure of castleguard, being part of the barony of Folkstone. In

the year 1192 it was granted, with the advowson, in francalmoigne to the Abbey of Langdon.

It would be easy to multiply instances, if they were needed, of lands anciently held in francalmoigne, which originally were held by knight-service. A full proof of such facts is enough to shew that lands are not of a customary nature: and conversely, if lands were at first held in francalmoigne and were then changed into a military tenure, they are held at common law.

Mention was made in a former chapter of the very large estate given in francalmoigne to the monastery of Christchurch by Queen Eadgifù or Ediva *, A.D. 961, and of the confirmation of the gift by the charter of Edward the Confessor preserved in the Cottonian Library †.

* Somn. Gav. 112.

† [Kemble Cod. Dipl. vi. 44.

It included the whole or portions of the manors following, viz. Aldington, Mepham, Cowling, East Lenham, East Farleigh, East Peckham, Monkton, with certain forest-land in the Weald of Kent. The demesne lands of these manors were very extensive, and being thus held anciently and originally in francalmoigne are not of a gavelkind nature. A consideration of some points in their history is therefore important for our present inquiry.

Monkton, comprising nearly half the Island of Thanet, and Mepham, were held by the Priors of Christchurch in francalmoigne until the Reformation, and were then given to the Dean and Chapter of Canterbury to hold in the same tenure ‡, by whom the extensive demesne lands are let for terms of years, and the quit-rents from the gavelkind tenants received.

‡ Hast. iii. 356, viii. 258.

The portion of land in Cowling is not particularly described in Domesday Book, but the charter of free warren

given to the monks in 10 Edw. II. is said to mention demesne lands held by them in this parish [c].

The manor of Aldington, including at the Conquest those of Stowting and Limne, was likewise reserved by the archbishops, and the tenure changed from francalmoigne to knight-service. It contained more than seventeen *sulings* of arable land, of which a great part was held in demesne, and therefore not at that time in socage. The demesnes of Aldington became socage held *in capite* of the manor of East Greenwich in 5 Car. I. [*] [d] The free tenure of these demesnes is shewn by the Escheat Rolls, e.g. those of Limne were held by knight-service and not in gavelkind by Bertram de Criol, 34 Edw. I. 37. According to Domesday Book they cannot have been much more than sixty acres [†]. Those of Stowting were held as freely by Stephen de Heringod, mentioned above in the suit of *De Bendings* v. *Prior of Christchurch* [e].

[*] Lamb. Per. 534; Hast. viii. 320.

[†] Ibid. 288.

[c] Hast. iii. 520. It does not appear in the list given in the *Monasticon*, i. 105, from Cotton MSS. Claud. A. 3, 110; nor in the list of lands belonging to Christchurch at the dissolution, *Valor Eccles.* 26 Hen. VIII. The manor of Cowling was part of the barony of Odo, Earl of Kent, and was held of him in knight-service by the family of Butler. Afterwards by the Cobhams, as appears by the Book of Aid, as one knight's-fee.

A portion of tithes from the demesnes was given to the monks of Rochester, soon after the Conquest, in francalmoigne. The land thus identified as being held in demesne by military service is called Westbrooke. (*Regist. Roff.* 164, 268.)

[d] Vide *Gouge* v. *Woodin*, *supra*.

[e] Esch. Rolls, 41 Hen. III. 43. For the freedom of this manor and demesnes from customary descent see *Abbrev. Placitorum Coronæ*, p. 261 (*omissa* temp. Edw. I. r. 3), *Inq. p. m.* of William de Kirkby, who held them by knight-service 30 Edw. I. 31.

An inquisition *ad quod damnum* respecting the advowson of Stowting, settled by Stephen de Heringod on his daughter Christina de Kirkby, is mentioned in the *Calend. Genealog.* p. 649, 31 Edw. I. 119.

East Lenham was held in francalmoigne before the Conquest, partly by the Abbot of St. Augustine's and partly by the monks of Christchurch. Both portions were held by knight-service after the division of estates between the archbishop and his monks.

East Farleigh remained in the ownership of the prior and monks*. It contained at the Conquest six sulings and a-half of arable land, of which four ploughlands (out of twenty-six) were in the demesne of the monastery, besides half a suling held *allodially* free of all service by one Godfrey[f]. This description includes all the estate of the monastery in Loose (except part which was acquired in the reigns of Edw. I. and Edw. II.) and in Linton.

* Hast. iv. 373.

At the dissolution the manor and demesnes, consisting of 220 acres†, were given to Sir Thomas Wyat in knight-service *in capite*, and after his execution the demesnes alone to Sir John Baker by the like service, (1 and 2 Philip and Mary). The manor and demesnes of East Peckham had been dealt with in the same way. These last contained about 120 acres of arable, besides meadow and wood, and the manor-house or court-lodge, as appears by the parliamentary surveys‡ taken in 1649 of all the estates of Charles I.

† Co. Entries, 78, Attaint.

‡ No. 51.

[f] Referring to the description of East Peckham in the Domesday Survey, it will be found that there also a tenant held half a suling (about 100 acres) as free allodial land:—"One of the archbishop's men holds half a suling of this manor, and it paid tax with the other lands in the reign of Edward the Confessor, although it could not belong to the manor except in paying the land-tax, *because it was free land.*" These tenants of land which was not socage within the francalmoigne manor, cannot have been other than the drengs or lesser thanes described in a previous chapter. Being allodial, their lands could not then have been tributary, i.e. gavelkind.

These estates serve particularly well for the illustration of the rule with which this chapter is concerned.

1. We can trace their descent with precision from a period before A.D. 961 to the present time. Queen Ediva, by the deed cited previously, gave them "to God and the church of Canterbury free from all tribute or secular service," except the duties of the *Trinoda Necessitas*, a gift which, as we have seen, created an allodial tenure of francalmoigne, as distinguished from a gavelkind, socage, or tributary tenure.

2. Besides the tradition of this gift evidenced by ancient entries in the cathedral archives (to be found in the *Monasticon*) and the old pictures and inscriptions before mentioned, the monks preserved a copy of her deed, now in the Lambeth Library, and printed in the *Codex Diplomaticus*.

3. The original "land-books" or deeds of gift signed by the queen have perished, but the confirmation by Edward the Confessor remains in the British Museum as shewn above. There the manors of East Peckham and East Farleigh are enumerated among others held in francalmoigne by the monastery.

4. They are described, as we have seen, in Domesday Book, and distinguished into socage land, and allodial land divided unequally between the demesne lands of the monks and the free tenants above mentioned.

5. Another manor (Westwell) thus given and confirmed before the Conquest, and thus described in Domesday Book, was aliened in fee-farm by the monks as early as the reign of John, and the tenure thereby converted to socage. Yet we see by the suit described in this chapter that this change was not sufficient to turn the land into gavelkind, because it was not originally held in socage at the Con-

quest, but in francalmoigne, a tenure of very different nature, in fact the most opposite of all to socage, which implies certain and temporal services.

6. We find all the lands which had previously been held by the archbishop, bishop, and abbots in Kent, charged at the Conquest with certain services, but of an honorary or military nature, and therefore of a tenure superior to and distinct from gavelkind. Among these free military lands are those which Queen Ediva gave in francalmoigne, and which were allotted to the archbishop when he divided the estates of the Church at Canterbury with his monks, while they by special favour continued to hold by a tenure *superior* to barony or knight-service. The letter written by these monks to Henry II.* extracted earlier, shews also that the archbishop received a large estate in land to perform military service, which would else have been charged on the demesne lands of which we are writing.

* Somner, Gav. 211.

7. By other examples it was shewn that a manor and demesne given to the Church by a king of England before the Conquest, and held in francalmoigne at the compilation of Domesday Book, was not of gavelkind nature, but in the hands of a lay-owner was held at the common law by knight-service. Clearly, then, were the manors free, which were held in francalmoigne from the tenth century until the dissolution of the monasteries.

8. The decision respecting Westwell manor was borne out by the judgments in *Gouge* v. *Woodin*, *Dionysia Noel's Case*, *Lennard* v. *Sussex*, *Browne* v. *Brookes*, and others above-cited, which all limit gavelkind customs to land which was held, or is presumed to have been held, in socage at the Conquest. And in another way it was confirmed by the case of *Lushington* v. *Llandaff* in this chapter, which was decided on the ground that mere

ownership since the Conquest of land by an ecclesiastical corporation (whether in francalmoigne or in chivalry) will not rebut the presumption that at the Conquest it was socage, and not in francalmoigne or military tenure. Further, it has been seen that an *ancient* tenure *in capite*, such as that of these manors of the Church, is inconsistent with a *customary* tenure (*Browne* v. *Brookes* *), as was noticed by the Real Property Commissioners.

* 2 Sid. 153.

9. It will be seen by the Parliamentary Survey of 1649 that in the manors which we are now particularly considering as illustrations of our rule, there were ancient quit-rents and heriots payable to the lords of the manors by all the freeholders of socage, i.e. gavelkind tenure, as we might expect from knowing that the original services and payments in kind were generally commuted for quit-rents in the fourteenth century or earlier. Indeed the presence of a quit-rent is the best evidence that the land was originally socage. It will be found that no quit-rents are payable out of any lands which formed part of the demesnes, whether now separated from the seignory or not[5].

[5] By the Survey of East Peckham, Parl. Surv. 51, in the records of the Augmentation Office, it appears that the Court-lodge or manor-house with the demesnes had been alienated by the Crown, and that there were payable at the Court-lodge the quit-rents due from the freeholders in free socage tenure, in East Peckham and the township of Marden, the rent of hens and eggs from the same freeholders, and a heriot of the best living thing belonging to each freeholder upon every demise or death, or in lieu thereof a payment of 3s. 4d.

The manor of East Peckham includes the Den of Chillenden in the parish of Marden. In the inquisition taken on the death of Walter Colepepper (1 Edw. III.; Lambarde 540, 542; Hast. iv. 377), are described some of these free socage tenements in East Farleigh and East Peckham, which were held in gavelkind of the priors of Christchurch.

"An inquisition taken at Tonbridge before the King's escheator for

One of these estates, consisting of over 170 acres, of the demesnes of East Peckham, was alienated by Sir J. Baker to Antony Weldon, whose title (says Hasted *) being disputed by the Crown, the Attorney-General exhibited an information against his heirs, and obtained judgment in favour of the Crown. The premises were, however, recovered by proceedings on a writ of error by the eldest son of Antony Weldon, whose eldest son "inheriting †" his father's estates again alienated this property.

* vol. v. 95.

† vol. ii. 412.

Another portion, containing the manor-house and 220 acres of demesne land in East Farleigh and Linton ‡, was held under a family settlement by Captain Nicholas Amhurst, who died in 1715. "He, having neglected to cut off the entail, his three younger sons claimed their respective shares" as co-heirs in gavelkind from their eldest brother §.

‡ Co. Ent. 78; Dyer, 115.

§ Hast. iv. 377.

"The entire fee (of the portion last named) after much dispute, partly by purchase and partly by agreement, became vested in the *youngest* son."

This is somewhat remarkable for several reasons. First, that a claim of gavelkind inheritance should have been

the county of Kent, Feb. 25, 1 Edw. III. The jury declare on their oath that the said Walter Colepepper . . . was seised in his demesne as of fee at the date of his death of certain gavelkind tenements at East Farleigh of the Prior of Christchurch by the service of paying twenty shillings a-year, and attendance at the three-weeks court in East Farleigh. There is a mansion and seventy acres of arable land, . . . and rents to the value of thirty shillings a-year payable at the usual quarter days, and a rent of twelve hens payable at the same time. Also that he held in gavelkind of the said prior by the same services a rent of five shillings, and another of two hens in West Farleigh. And that he held certain tenements in gavelkind in the ville of East Peckham of John de la Chequer, as of his manor of Addington," &c., &c. All the sons of W. Colepepper were found to be co-heirs of these tenements, and his eldest son of the "liberum feodum," or frank-fee at Shipborne described later in the same document.

put forward. But it must be remembered that much confusion prevailed as to the true limits of gavelkind at that time. It was not until eighteen years afterwards that the decision of *Gouge* v. *Woodin* rendered it well-known that nothing was gavelkind, which was not originally socage.

In the next place we must remember, that it was then a proceeding of the greatest difficulty to disprove a claim of this kind. The public records were unpublished and for the most part inaccessible, except at a very large expense of time, labour, and money. Therefore we read of partitions having been made in the last century of lands, which were held by military tenure from the Conquest. When a claim, indeed, came to trial the evidences were produced and the freedom of such land affirmed, as in the case of the knight-service and castleguard lands of the Earl of Sussex in 1706 and 1709. But in general it was easier to make a partition without a law-suit. Besides which, the case rarely arose of an intestate landowner leaving lands of only *one* tenure. In general there was an admixture of gavelkind land, which necessitated the partition, which was afterwards loosely described as having affected the whole estate. Instances of partitions of this kind will be found in the next chapter. In the present case we have to remark that no partition among the supposed co-heirs took place.

If the lands had originally been socage, or if they could have been presumed of an ancient socage nature, the presumption of law must immediately have taken effect, and the lands have been partitioned among the male heirs without further dispute. But they were not socage at first. Therefore the eldest son ought to have taken them all. It seems however that a compromise took place, and partly by purchase and partly by agreement the youngest took

all. This compromise may have included other matters which we do not know, but whether the brothers considered the land to be gavelkind or not, it is pretty clear that the land would now be made to descend to the heir at common law: the publication of Robinson's Treatise, Hasted's History, the cases of *De Bendings* v. *Prior of Christchurch*, *Gouge* v. *Woodin*, *Lushington* v. *Llandaff*, and others mentioned above, (besides the records of Chancery and the Exchequer now opened to public inspection,) rendering such compromises unlikely to occur in future.

Having shewn that the essence of tenure in francalmoigne was freedom from temporal service expressed or implied by the words *libera* or *pura eleemosyna*, it remains to say a few more words about the spiritual tenure of that inferior kind, in which temporal and certain service could be reserved by the donor.

This inferior kind is called tenure by divine service, and was defined by Britton* under the name of *Almoigne* or *Aumone*. "Almoigne is where lands or tenements are given in alms reserving any service to the feoffor†."

* fol. 164.

† Co. litt. 97 a.

Such service might be either (1) a divine service certain, as to feed a hundred poor men yearly or to perform a fixed number of Church services, or (2) a temporal service certain, as to pay rent. The tenure drew with it fealty, and gave the lord the right of distress for services unperformed, in both which respects it differed strikingly from francalmoigne.

When gavelkind lands were given to an abbey or priory in Kent it is generally found that a tenure by divine service was created, the grants being only *in perpetuam eleemosynam*, and not *in liberam* or *in puram eleemosynam*.

This will account for the form of those old deeds of grant, which have indeed been mentioned in a preceding

chapter, by which lands were given to a hospital or other ecclesiastical corporation "in perpetual alms to hold in gavelkind [h]."

In the same way this accounts for the reservation of a "for-gavel [i]," or quit-rent payable to the mesne lord, who made the gift *, which is so frequently found in the grants to the Church of gavelkind lands.

* Somn. Gav. 39, 184.

It should be remembered that Somner, though in general an accurate writer, makes a great mistake in speaking of this tenure by divine service. He assumes that these grants "in perpetual alms and in gavelkind" were creations of a new customary tenure.

"What," he wrote, "shall be said to gavelkind land of novel tenure upon the grant of lands, till then happily *holden in demesne,*

[h] Many of these deeds are said to exist in the Canterbury archives. Some have been cited in earlier chapters. See *Bibliog. Topogr. Britann.* vol. i. p. 236; Somner, Gav. 8, 38, 55, 184.

"1. Know all men that I, R. F., have given and granted *to God and the brethren of St. Laurence's Hospital* by Canterbury, seven acres of my land to be held in gavelkind of me and my heirs freely, rendering yearly thence to me and my heirs forty-two pence for all services." The words in italics, if standing alone, would have sufficed to create a pure francalmoigne tenure.

"2. Know all men that we have granted to the poor men of Harbaldowne one acre and a half of land in perpetual alms and to gavelkind, by the rent of twopence to be paid yearly on St. Nicholas' Day." (Confirmed by the heirs of the donors.)

Compare the deeds extracted from the archives of Cumbwell Priory by the Kentish Archæological Society, vol. v. pp. 199, 206, 212.

In the first, land is given "in perpetual alms free and quit of all earthly service except two shillings of yearly rent." The other two are grants in *francalmoigne* "saving the service due to the king," and "saving the foreign (military) service due from the land," respectively. Co. litt. 74 b.

[i] For-gavel (*Foris-gabulum*) was a rent over and above the rent-service due to the lord paramount. See a deed reserving an "extra rent-service" of this kind, and relating to lands in Kent granted by Hamo Doge to a tenant by divine service. Ellis' Dugd. *Monast.* i. 146.

to one or more persons in gavelkind, as was usual before the Statute *Quia Emptores terrarum*, until when a man might create in his land what tenure he pleased, granting out, as Bracton * said, in socage, what he had before in knight-service and *è converso?* We are here met with a dilemma; for either the land was not partible and why then called gavelkind; or if partible yet it was not by custom †."

* Bract. 36. 2. 48 a.

† Somn. Gav. 47.

He draws from the facts a curious conclusion that gavelkind does not spring from ancient custom alone, but might have been newly created before 18 Edw. I.; that it is equivalent to socage, and included all land of every tenure which did not remain continuously held in knight-service from the Conquest downward, an opinion which the foregoing chapters and collections of cases have, it is hoped, rendered untenable, if any one should wish at the present day to maintain it.

Another passage in Bracton ‡ should have corrected him, where it is said, "as in gavelkind or elsewhere where the land is partible *ratione terræ*," or, in other words, where the customary qualities are by law inherent in the land itself.

‡ 374 a.

We cannot hold with Somner's opinion in any way, in opposition to the well-known *dictum* or "*decantatum*" of the law in Kent, that gavelkind must have been originally socage, and that the customary qualities cannot either be created or destroyed except by an Act of Parliament specially passed for the purpose.

The expression "*tenendum in gavelkind*" is no evidence of the creation of a new tenure, but rather that the land was of that nature before the grant.

The strongest example adduced by Somner in support of his view was a deed, by which the Prior of Canterbury granted a portion "de dominio nostro in *North Ockholt*

* Somn. 180.

tenendas de nobis in gavelkind*." But there is nothing in Domesday Book to shew that Nockholt was held in francalmoigne, though the manor of Orpinton was so held, of which that estate was an appendage.

The tenure by divine service was unimportant, so far as regards the present enquiry, for this reason, viz. that no land was held by it at the time of the Conquest so far as appears by Domesday Book.

Any land, therefore, which in later times was given to an ecclesiastical corporation to hold in this manner must either be considered to be gavelkind, or proved to have been held originally in francalmoigne or a military tenure. The mere proof of an early tenure by divine service is of no more avail against the common presumption, than the proof of an early, but not original, military tenancy by ecclesiastics.

While in the ownership of the tenant by divine service the customary incidents of the gavelkind estate were suspended, but not destroyed, and they revived in the hands of any layman who afterwards acquired the land[k].

The importance of considering the tenures of those estates, which were held by the Church in Kent before the Reformation, will appear from Hasted's account of the number of the suppressed religious houses.

"There were in this county, of the Benedictine order, two abbeys, three priories, and five nunneries; of the Clugniac order, one priory; of the Cistercian, one abbey; of secular canons, five col-

[k] Compare the language of Coke respecting abbots who held by military service. "Although by the abbot's death there is neither ward, marriage, nor relief due, yet he holdeth by knight-service, albeit the lord cannot have the fruit of it. And if the abbot aliene the land over to a man and his heirs, there is the ward, marriage, and relief revived."—(*Co. litt.* 99 a.)

leges; of regular canons, four abbeys and five priories; of Dominican friars, one priory and one nunnery; of Franciscans, two priories; of Trinitarians, one priory; of Carmelites, three priories; four alien priories. Two commanderies of the Knights of St. John of Jerusalem, and fifteen hospitals, besides several hermitages, chauntries, and free chapels. These houses were suppressed at several different times.

"The total *clear revenues* of the above monasteries and other religious foundations in this county, were about £9,000 *per annum*, in the reign of Henry VIII.*"

* Hast. i. 323, 331.

Of these some held their lands from before the Conquest in francalmoigne, "a tenure of a nature very distinct from all others †," some from the Conquest by barony or knight-service and in some cases by castleguard. The manors and demesnes thus held, have been shewn to be now descendible at common law. The rest held by military tenure, francalmoigne, or divine service, and we have shewn that their manors and demesnes are now descendible at common law, or in gavelkind, according to the proofs producible of the ancient tenure of such lands before they were given to the ecclesiastical tenants.

† Ibid. 322.

CHAPTER XIII.

Tenure by Knight-service.

General rule.—Office of Escheator and Feodary.—Escheat Rolls.—Red Book of the Exchequer.—*Testa de Nevil.*—The Feodary of Kent.—The Roll of Blanch-lands.—Difficulty of consulting records.—Disinclination to enquire into tenures.—Amount of land in Kent held by Knight-service.—The Statute 18 Henry VI. c. 2.—Circumstances to which it referred.—Trials of attaint.—Consideration of the Statute.—Fractions of Knight's-fees.—Lands of the Church.—Lands of the temporal peers.—Examination of Inquisitions *post mortem* in the reign of Henry VI.—Manors of *LAMBERHURST, BARMING, OTHAM, JENNING'S-COURT, BUCKLAND, LUDDENHAM, HARRIETSHAM, MARLEY, KENARDINGTON, COCKRIDE, BRABOURNE.*—Question as to tenure of advowsons.—*ULCOMB, TIRLINGHAM, LEVELAND, ORLESTON.*—Alleged partitions by Gavelkind co-heirs.—*Woods-court.*—Estates of the Earl of March.—*SWANSCOMBE.*—Early history of the manor of *ERITH.*—Trial as to tenure of *EYHORNE.—MURSTON.*

HAVING now examined briefly the spiritual tenures known in Kent, as well as the higher tenures in chivalry, as barony, sergeanty, and castleguard, it remains for us to consider the freedom of lands held "by ancient knight-service" throughout the county from the customary qualities natural to its gavelkind or "ancient socage" portions.

We have laid down the general rule, that all lands and tenements descend to the heir at common law, which at the Conquest were in a tenure superior to socage; the same rule will now be treated partially, or rather under another aspect, in estimating the value of the maxim, that "ancient knight-service lands in Kent are not partible."

In one sense the maxim has already been fully proved while the tenures of barony, sergeanty, and castleguard

were discussed. For all the land, which was held anciently by knight-service, was part of the baronies created by the Conqueror, and had been part of the allodial possessions of the spiritual or temporal thanes before the Conquest. Much, too, of "the ancient knight-service portion of Kent" was held (as we have seen) by sergeanty, and much by castleguard of Dover and Rochester castles. But several important cases would be neglected if no more were said of the tenure by simple knight-service.

Until the abolition of the military tenures, it was well known in Kent which lands were gavelkind, and which were not. On the death of any landowner, the king's officers (the Escheator* and the Feodary) summoned a jury to report on oath of what lands the tenant died seised, and by what tenure they were held; the jurors also returned the name and age of the heir, and his relationship to the deceased. These inquisitions *post mortem* were collected and are enrolled in Chancery, in a collection named the Escheat Rolls; and a supplementary series of these documents, or copies of them, were preserved in the Exchequer. "They are," says the Secretary to the Public Record Office, in his preface to the recently published *Calendarium Genealogicum*, "of such importance as to have been styled 'the proprietary map of England,'" and "are the basis of nearly all that we can be said to know concerning the descent of the baronage of England, of the lords of manors, and generally of the owners of the land[a]."

* Co. litt. 92 b.

The Kentish historians have always recognised the importance of these documents, and the readers of Hasted

[a] A Calendar to these important documents was first published by the Record Commissioners in 1806.

and Philipot will find many references to them in their works. Besides which, these writers, having occasion to make abstracts of most of those which related to this county, have left copious notes and memoranda which are of the highest importance in any enquiry into the limits of gavelkind.

It was thought necessary by the chief writer upon gavelkind to notice all trials, however early, relating to the tenure of the Kentish lands; he therefore searched most of "the records of proceedings before the justices in eyre for Kent in the reigns of Henry III., Edward I., and Edward II., and before the justices of assize in the same county, down to the reign of Richard II. *," besides some early cases in the King's Bench and Common Pleas. Since Robinson wrote, a great number of these early cases have been published, e.g. in the *Abbreviatio Placitorum*, and a reference to the whole is much easier than in his time.

* Rob. Gav. pref.

But it would be impossible here to enumerate at length the additional sources of knowledge concerning Kentish tenures which have been opened in late years. It may be sufficient to state some of the results, with references which will enable those who wish to find out for themselves that minute history of every estate in the county, for which this is not the place.

In arguments about the number and extent of the military lands in Kent, Domesday Book is of course the earliest and the greatest authority. But if we had no more than that ancient record, it would be very hard ever to identify the particular lands. Fortunately, however, it was necessary under the feudal system to record everything connected with these military estates, that the feudal dues and duties might not be lost to the lords.

For example, we have seen that nearly half the knight's-

fees in Kent were held by castleguard, so that the records concerning the two principal castles in the Exchequer have preserved for us full and continuous lists of the lands owing this service from the reign of William I. to that of Charles II.

Again, the three great aids were due to the king from his tenants *in capite*, when he required a ransom from captivity, or knighted his eldest son, or married his eldest daughter. This necessitated the preservation of faithful lists of all the lands liable to such occasional payments. Such lists are to be found in the Red Book of the Exchequer, and the *Testa de Nevil*, containing the names and estates of all the tenants *in capite*, not holding in francalmoigne, during the reigns of Henry III., Edward I., and at the accession of Edward II.

But the most important record perhaps for Kentish landowners is that which is especially named the Book of Aid, which was taken as the standard authority in later reigns to determine whether lands were anciently held by military service, or not [b].

It was compiled on the occasion of levying an aid for making the Black Prince a knight in 20 Edw. III., and in the next year was returned into the Exchequer. A copy of this, with additional notes and memoranda relating to the ownership of these lands in the reign of Henry VIII., forms the Feodary of Kent, compiled by Cyriac Petit for the Exchequer, in which he was an officer. References to his notes upon its contents will be made in the next chapter.

[b] "Feoda Kanciæ contenta in Scaccario Regis per quæ scutagium erat levatum in comitatu Kanciâ 21 Edw. III., pro primogenito filio suo milite faciendo."

Another good authority is "the roll of Blanch-lands in Kent," in which are set down the names of those estates on which an aid was levied when, in 4 Hen. IV., the Princess Blanche was married.

From these and the like sources information may be gained as to the tenure of each manor in the county from the Conquest until the abolition of feudal tenures; and it is of course easier by a great deal to trace the history of an estate from the last-mentioned date to our own time.

But before these records were arranged and thrown open to the public, the case was different. There were considerable difficulties to be encountered in determining the nature of any lands, except those which had formed portions of well-known and important inheritances[c]."

Accordingly it was usual to neglect these enquiries, and to guard against doubt by means of wills and strict settlements, so that the question of tenure might not arise; notwithstanding which precautions many disputes and several heavy law-suits have been the result of the uncertainty as to heirs in cases of intestacy.

The disinclination to enquire into the tenure of particular lands is partly due to a mistaken impression that after all there was not much land in the county which

[c] Thus when Hasted wrote his history, he said: "The difficulty of procuring any knowledge in relation to them (descents and changes of property) becomes every year greater. Whilst feudal tenures subsisted, and the Court of Wards and Liveries was in being, *a complete information could be gained of almost every manor and estate of consequence* of which any one died possessed, either by searching that office for the solemn inquisition, usually styled *inquisitio post mortem*, taken after the possessor's death by the king's escheator on the oaths of a jury, &c.; or by searching the Escheat Rolls made up from his return at the Exchequer. The above-mentioned court was abolished at the restoration of Charles II., and these helps are now lost to the laborious historian."

was free from the nature of gavelkind. This impression is doubtless due to the manner in which Robinson wrote in one of his earlier chapters.

"All lands," he wrote, "in Kent originally holden by ancient tenure of knight-service, are descendible to the eldest son only, and are not of the nature of gavelkind. . . . . Though the custom of gavelkind be confined to tenements of (ancient) socage nature, yet there were fewer lands anciently holden by knight-service than perhaps in any other county; insomuch that it was said * that all the land in Kent is holden in socage. But this is not to be taken literally [d]."

* Pasch. 18 Edw. II.; Mayn. 610.

It must be remembered that Robinson was writing of gavelkind, and not of the lands in Kent descendible at common law, except incidentally. But the statement at first sight is very surprising that much less land was held by services of chivalry here than in other counties. Every manor mentioned in the Domesday Survey of Kent was held by military service, except those which lay in the higher tenure of francalmoigne. Further, all the land which lay in the demesnes of those manors was "anciently holden in knight-service." There is, however, an explanation of the statement. Less land was held by the military tenants of Kent than by those of other counties in a tenure of chivalry, because the demesnes were the only portions of which the lords retained the freehold. In other counties the cultivators of the soil were mostly tenants at will, or

[d] Robinson cites as to these knight-service lands Mic. 3 Joh. 13 d; 9 Hen. III., Prescription 63; 55 Hen. III., Itin. Kanc. 20; Hil. 10 Edw. I., c. b 27; *De Beggbrook's Case*, 26 Hen. VIII., 4 b; *Kirby Lee's Case*, 1 Sid., 138; *Gouge* v. *Woodin;* 39 Hen. III., 18 d; 43 Hen. III., 4; 55 Hen. III., 20, 38, 52; and 9 Edw. II., c. b. 240; 31 Hen. VIII., c. 3; 18 Hen. VI., c. 2.

rather serfs, holding land which, in the eye of the law, was in the same tenure as the lord's portion. In Kent, by a special privilege, the cultivators or *villeins* were, with few exceptions, freeholders. The same cause, therefore, which limited the number of copyholders in Kent, limited also the extent of the estates held by knight-service. These estates were as numerous here as in other counties of the same size, but each of them was smaller. It will be found, however, that the aggregate of "military lands" in the free manors of this county is very considerable. As to the extract from the record dated 18 Edw. II., we may remark that there was in fact a great change in Kent from knight-service to socage, as will be presently shewn. Socage of this kind was called "frank-ferme," (*libera firma**); it was never confused with ancient socage or gavelkind.

* Co. litt. 94 b.

The whole number of knight's-fees in Kent was, in the reign of King John, 254. A knight's-fee being then worth £20 a-year, we see that the aggregate of the estates which did not lie in gavelkind was about £5,000 a-year, which must have been a large fraction of the value of the whole lands of the county, considering the difference in the value of money.

Of these we have seen that about half were held in castleguard; the archbishop had twenty-seven, the bishop of Rochester eight, and the abbot of St. Augustine's fifteen.

This number of knight's-fees does not imply merely an equivalent number of manors free from the qualities of gavelkind. Some manors were held by the service of two or more knights; from many others but a small fraction of the service of a knight was due. The list of those lands which paid aid to the king in 20 Edw. III. (in the Ap-

pendix) will give some idea of the number of estates which were descendible at common law.

But here we are met by the objection which seems to have chiefly hindered Robinson from pursuing an enquiry into the amount of lands and tenements which were not held in gavelkind. The passage, which he as well as Somner and Lambarde have quoted from the statute 18 Hen. VI. c. 2, runs thus:—

"In respect of which ordinance *, seeing that within the county of Kent there be but thirty or forty persons at most which have any lands or tenements out of the tenure of gavelkind, and the greater part of the county, or well nigh all, is of the tenure of gavelkind, which persons be constantly impanelled and returned in actions or writs of attaint," &c., &c.

* 15 Hen. VI., *infra.*

This fragment of the statute deserves particular attention. Before it can be understood, the circumstances to which it refers must be known. They are briefly these.

Henry VI., wishing to amplify the privileges of gavelkind, granted to *all* tenants of such land exemption from serving on juries in actions of *attaint*, a privilege which those tenants of gavelkind, who were men of the Cinque Ports or who held portions of the king's ancient demesne, had long enjoyed † [e].

† Lamb. Per. 568.

[e] The principal remedy in ancient times for a false verdict given by a petty jury was the action of *attaint*, in which the verdict of a jury of twenty-four decided if the jury of twelve had brought in a wrong verdict. The penalty at first was infamy, imprisonment, and forfeiture of goods, the theory of a jury being at first that the jurors were witnesses testifying out of their own knowledge to the facts. A false verdict was on this view equivalent to the worst perjury. By degrees, however, the penalty was commuted for a fine in money. The writ of attaint was as old as the reign of Henry II., and though long obsolete in practice was not abolished until 6 Geo. IV. c. 50, § 60; Co. litt., 296 b; 5 Bl. Comm., 388, 402.

A property qualification was necessary for all jurors in actions of attaint, *scil.* an estate of £20 a-year in land.

Within three years of the granting of the privilege above mentioned, a petition was presented to the king praying that it might be rescinded, seeing that the thirty or forty persons holding lands out of the tenure of gavelkind were unjustly incommoded by being pressed constantly to serve in these juries of attaint.

This is a very loose description. The records of the Exchequer at that time specified every tenant of ancient military land, and defined the amount of his estate with great particularity. Yet the petitioners describe their class as consisting of *thirty or forty* persons. Again, the privilege had only been used for three years, and it is extremely improbable, to say the least, that sufficient cases of false verdicts would have risen in that short period to sustain the truth of the petitioners' statements. However that may be, let us see exactly to what the petition referred.

It is evident, in the first place, that it referred only to those persons who were liable to sit as jurors in the cases mentioned. All who were liable to serve must have had the legal property qualification.

There were then about forty persons who had landed estates to the value of £20 yearly and upwards, who did not hold gavelkind [f].

Of this the statute above cited took notice, and having shewn to what set of events it referred, we will now cite the entire passage, and not only the isolated clause on which so violent a stress has before now been laid.

"Whereas in the Parliament (15 Hen. VI.), &c., it was ordained that no sheriff . . . . in actions or writs of attaint of pleas of land

[f] Lamb., Peramb., 546; Somner, Gavelkind, 53.

of the yearly value of forty shillings or more, nor in personal actions, whereof the judgment of the recovery extends to £40 or more, ... should return or impanel in any inquisition or inquest any persons .... *which have estates in lands to the yearly value of £20 or more out of ancient demesne, the Cinque Ports, or tenure of gavelkind.* In respect of which ordinance, seeing that within the county of Kent there be but thirty or forty persons at most which have any lands or tenements out of the tenure of gavelkind, and the greater part of the county, or well nigh all, is of the tenure of gavelkind, which persons be constantly impanelled and returned in the said actions, therefore be it enacted," &c.

By this Act the privilege of exemption from these juries was removed from the tenants of gavelkind.

Now taking the statements here quoted as literally true, a course against which many arguments could be adduced from the nature and animus of the petition, we shall yet see that they prove the exemption from gavelkind of very large and numerous estates.

Forty persons owned such estates, each to the yearly value of £20 or more. We are not told how much more each possessed. That, however, can be ascertained, if need be, by means of the inquisitions *post mortem*. Let us take the *minimum* and allot one estate of £20 yearly to each. Then the aggregate value of their estates in 18 Hen. VI. would be about £800 *per annum*.

We must now consider what value this represents, after allowing for the change in the value of money. There is no need to do this with minuteness: a rough estimate will suffice to shew the importance of the question.

The Act of 15 Hen. VI. c. 2, helps us to get a rough estimate of this kind. By this act the price up to which wheat might be imported was fixed at 6s. 8d.; "a point,"

says Hallam [g], "doubtless above the average, and the private documents of that period, which are sufficiently numerous, lead to a similar result. Sixteen would therefore be a proper multiple, when we would bring the general value of money in the reign of Henry VI. to our present standard [h]." This was written in 1816, since which date a larger multiple would seem to be required. The multiple, however, which was chosen by Hallam would make the total yearly value of the estates of these forty persons to amount to nearly £13,000 of our money, if each of them had no more than the bare legal qualification. But we know that this in reality fell far short of the true value, some of them owning two, others three, and some owning several knight's-fees, while none had less than one.

But it must not be supposed that the forty landowners, to whom the statute refers, held all the free lands of Kent. In the first place there was a large class of persons owning *fractions of knight's-fees*. The Feodary of Kent, not to speak of the more ancient records, is full of the descriptions of estates as small as one tenth, one fortieth, and even one seventieth part of a knight's-fee. Instances will be presently given of estates comprising a few acres or a few shillings of rent-service [i], which were descendible to the heir at common law. In one case it was actually found by the jury that *one acre* in a particular field was so descendible, and the rest gavelkind.

It was always noticed as a characteristic of the county of Kent that the number of tenants was larger and the

[g] Middle Ages, iii. 170.

[h] See tables compiled by Sir Francis Palgrave cited in the same place.

[i] For instance, in the inquisition *post mortem* of W. Colepepper, quoted before, his *eldest* son inherited a rent-service of 26s. 6d. held by him out of gavelkind in Shipbourne.

freeholds were smaller in proportion, than in any other part of England[k]. This is due chiefly no doubt to the custom of partible descents, as is noticed in the disgavelling ordinances and statutes*. But it is also due to other causes. The statute of *Quia Emptores*, which prevented the subdivision of services, incited and promoted the subdivision of tenancies all held of the same lord. Add to this the effect of subdivisions among co-heiresses and by wills among devisees, and we find no reason to be surprised that much of the "free land" of Kent should have been held in small parcels. "Terra alienata per particulas," is the expression used in the *Testa de Nevil* of the military lands held by sergeanty which were thus subdivided as early as the reign of Edward II.

* 2 Inst. 595.

In the next place we must especially remember that the statute applied to those landowners who were liable to sit on juries of attaint, and no others. This consideration will exclude the lands then held by the Church, which, as we have seen, were most numerous and valuable.

The Prior of Christchurch alone held thirty-five manors. The measurements given by Thorne shew that the Abbot of St. Augustine's held nearly twelve thousand acres. At the time of the suppression of monasteries the Church held lands in Kent worth *at that time* £9,000 *per annum*, which were resumed by the Crown, besides the vast possessions which the Archbishop and the Bishop of Rochester were permitted to retain.

[k] At the end of the last century the number of freeholds was about nine thousand, "which is surprising (wrote Hasted) considering the large possessions which the two episcopal dioceses, the two cathedrals, the several colleges in Oxford and Cambridge, and other bodies corporate, are entitled to in it; which, at a rack-rent, were then computed at upwards of £80,000 per annum, besides parsonages and tithes."—(vol. i. p. 301.)

We may further exclude the temporal peers, who shared among them a large proportion of the land held at common law.

The foregoing remarks may be verified by a cursory reference to the evidences collected in the inquisitions *post mortem* of the reign of Henry VI. We find, for instance, in the inquisition taken on the death of Sir Thomas Poynings in 7 Hen. VI., the following list of "knight's-fees pertaining to the manor of Basing held by the late Sir T. Poynings":—

NAME OF ESTATE.	PORTION OF KNIGHT'S-FEE.
*Betshanger	1
*Ham	1
Norton, Newington, Fishbourne	1
Tunstall	1
*Moriston	1
*Bicknor	1
Kingston, *Tong	5
Elnothington	1
*Pising	1⅓
Harty[1]	⅓
Barston	¼
Sholand	¼
Total	14⅓

The manors marked with * were held by castleguard of Dover Castle.

Another important inquisition is that which was taken on the death of John Pimpe of East Farleigh. His eldest son, Reginald, was found to be the heir to the following lands, manors, and advowsons, and all his sons together

[1] See *Lowe* v. *Paramour*, *supr.*, and Dyer, 301.

to his other lands, which were "of the tenure of gavelkind * [m]." * 16 Hen. VI. 50.

NAME OF ESTATE.	
East Barning	Half the manor.
West Barning	Manor, advowson.
Otham	Manor, advowson.
Loose	Manor.
Nettlested	Manor.
Pimpe	Manor, lands, house.
The Moat, Brenchley	Manor and lands.
West Malling East Malling	Lands.
Lamberhurst [n]	Manor and lands.

It is sufficient to trace the descent of one or two of these estates.

Otham was part of the barony of Odo, Bishop of Bayeux, described in Domesday Book as containing "one suling and one yoke," of which half lay in demesne.

It was held as one knight's-fee in the reign of Henry III., according to the *Testa de Nevil*, by Peter de Otham and his daughter Loretta, wife of William de Valoignes. She divided it in her lifetime between her two sons, Walter and Robert †, by whom it was held (together with the advowson) as one knight's-fee parcel of the barony of Albemarle. In the Book of Aid, 20 Edw. III., the widow of one brother and the representatives of the other paid the same aid. Sir Ralph de Frenningham, of Loose ‡, † Gal. Geneal. 404. ‡ Hast. v. 515.

[m] "Terræ de tenurâ gavelkind inter heredes masculos." These lands and tenements were very numerous. Several of these estates came into the ownership of John Pimpe after the death of his elder brother. John Pimpe died in 18 Hen. VI., under which date his *Inq. post mortem* is enrolled.

[n] The manors of Lamberhurst and East and West Barming were held as of the castle of Tonbridge as part of the honour and barony of Clare.

held it by knight-service at his death in 12 Hen. IV., and devised it to John Pimpe and his *heirs male*, by which limitation it reached Reginald, *eldest son* and heir of John Pimpe.

It appears from the *Testa de Nevil* that this manor was held anciently by grand sergeanty, and that the tenure was subsequently changed to simple knight-service.

West Barming was a small manor, part of the same barony at the Conquest. It was then held by the Crevequers by military service. At the beginning of King John's reign it was held *in capite* by William de Barmling, formerly sub-tenant of Robert de Crevequer, as one knight's-fee. He was succeeded by his son Robert de Barmling[o], who died in 1269, and was found by inquisition* to have held this estate *in capite*[p] as one knight's-fee.

* 53 Hen. III. 10.

This inquisition has been published by the Kentish Archæological Society, vol. v. p. 300. It appears from it that his son William inherited the manor of Barmling, or Barming, and 100 acres of land, with a mansion, garden, woods, rents-service, and profits of courts. In Pimpe, 50 acres of arable, with meadow land, and rents of assize; in Egerton, 20 acres, held of the archbishop[q].

William de Barming died in 22 Edw. I.[r], and was succeeded by his son, Robert, holding these estates, as abovementioned, until his death, 31 Edw. I. Soon afterwards the estate was divided, and John de Fremingham paid the aid for making the Black Prince a knight on two-thirds of it, *scilicet*, the manor and 100 acres in West Barming.

[o] Omitted in Hasted's Account, iv. 394.

[p] Therefore not in gavelkind. *Kirby Lee's Case.*

[q] See also Cal. Geneal. 134; Red Book of Exchequer, 132.

[r] *Inq. post mortem* 22 Edw. I. 27.

From him it came to Reginald Pimpe, in the same manner as Otham above described.

The other third part of the estate, comprehending the manor of Pimpe with 50 acres, (otherwise called Jenning's Court, in Yalding,) was held by knight-service by John de Hunton in 20 Edw. III., and came to the Pimpes by a different track of ownerships. Hasted mentions another estate, supposed to be a fraction of Pimpe manor, which in 10 Hen. VI. was held by another family. All these estates are recorded among lands held by ancient knight-service in Cyriac Petit's "Feodary of Kent."

In 18 Hen. VI., the year in which the statute now under discussion was passed, died William Frognall, of Teynham.

His wife Margaret was endowed of the *third part* of Buckland manor and advowson, and of a rent-service of £2 11s. 11½ in Luddenham. This rent-service was paid in respect of half the estate called Bishopsbush, which her husband held by knight-service. Bishopsbush comprised half the manor of Luddenham, which was held of the Castle of Dover, by the tenure of castleguard, as part of the barony of Chilham[s]. The manor of Buckland was part of the barony of Leeds.

[s] Luddenham is described in Domesday Book as one suling, of which half was held in demesne. It was held as one knight's-fee in the 13th year of King John, (*Testa de Nevil*); afterwards by Sir Roger Northwood, who held it by knight-service. He also owned certain marsh-lands in Luddenham, which were gavelkind, but converted to 'knight-service land' by charter from the king in 41 Hen. III. This charter is still preserved. The other lands thus disgavelled by him are recapitulated in the Book of Aid 20 Edw. III., Philipot, 225.

Buckland was also held by castleguard. William de Apperfield was found to hold it by knight-service in 33 Edw. III., and his widow held *one-third* in dower. His son held it for his life, when the estate descended

Among the inquisitions taken in the next year, 19 Hen. VI. 21, is that of John Adam, who died holding half the manor and advowson of Harrietsham by knight-service of the king, as part of the barony of Peverel.

The manor of Harrietsham had been divided in 52 Hen. III., so that the family of Northwood held two-thirds, and that of Leybourne the remainder.

The former portion comprised "the manor of Harrietsham," of which John Adam held a moiety by knight-service. The whole manor is recorded as one knight's-fee in the Book of Aid and the Feodary of Kent *[t].

* Hast. v. 447.

The manor of Marley, in the same parish, was held by knight-service of the same barony from the time of the Conquest. It is perhaps worth noticing that by the Domesday Survey it contained one "suling" of land. By the measurements of the Parliamentary Commission in 1649, appointed to survey the estates of deans and chapters, it was found that the estate comprised 184 acres. This agrees very well with the notes on the dimensions of the Kentish suling in another chapter.

But John Adam held other lands which had not anciently been of military tenure. These are carefully distinguished in the record, and described as "a mansion and 120 acres of land in Dimchurch held of the archbishop *in gavelkind*."

In 22 Hen. VI. Sir John Basing died, and was found to have held two thirds of the manor and advowson of Kenardington by knight-service.

This manor (as was mentioned in the chapter on castle-

to Sybil Frognall, from whom it came to William Frognall, as mentioned above. He was succeeded by Thomas Frognall, who died in 1505 holding all the estates above-mentioned by knight-service. (Hast., vi. 398.)

[t] See *Inq. post mortem* Stephen de Cressy, 47 Hen. III. 28, and Roger de Northwood, 13 Edw. I. 25.

guard) was held immediately after the Conquest in barony of the king, being one of the knight's-fees forming the Constabulary, or estate of the Lord Warden of Dover Castle.

Sir Thomas de Normanville was found by inquisition, 11 Edw. I. 37, to have held this manor and advowson, with Cockride in Bilsington, *in capite* by knight-service. His brother Ralph was his next heir[u]. Besides these estates, and entirely distinct from them, these brothers had jointly been seised of gavelkind lands held of different lords. The jury found that the moiety of these lands descended to the said Ralph, as co-heir of his brother. A distinction was made between the lands held of the king *in capite*, which the eldest brother had inherited, and these gavelkind lands. ("Obiit seisitus .... tam de illis quæ tenentur de domino rege in capite, quam de illis quæ tenentur de diversis dominis in gavelkynde.")

Another Thomas de Normanville died seised of this manor and advowson, held by knight-service in 11 Edw. II.; and in the Pleas of the Crown for that year, 11 Edw. II., rot. 68, we find that his widow, Dionysia, was endowed at common law with *one-third* of the manor of Kenardington. We have seen that it was still held by knight-service in 22 Hen. VI., as it also continued to be held in 35 Hen. VIII. according to the Feodary of Kent.

Yet Hasted tells us that it was divided with the advowson among co-heirs in gavelkind*. He may have been mistaken in his deduction from the facts of the case; there may have been a division of gavelkind lands comprised in the estate among co-heirs, and a descent at

* Hast. vii. 247.

[u] Hasted's account is wrong. He confused Thomas de Normanville, who died in 11 Edw. I., with his relation of the same name who owned this estate at his death in 11 Edw. II. (Hast. vii. 246.)

common law as to the manor and advowson, or a division by family arrangement. If his statement is true, it is evident that a mistake was committed.

In the same year Sir Hugh Halsham died seised of the ancient knight-service manor of Brabourne, and two-thirds of the advowson of Hinxhill. The former estate was one of the thirty manors in Kent held in barony by Hugh de Montfort at the Conquest, and in the reign of Edw. I. was held by knight-service as of the king's Marshalsea[x]. The latter, with the manor of Hinxhill, to which it was appendant, formed part of the same barony. We find no account of any demesne lands comprised in it at the date of Domesday Book. Indeed, we are told in that survey that "a certain socage tenant held it of the late king."

It is remarkable, therefore, that the advowson should have been descendible at common law, inasmuch as any demesnes afterwards reserved must have been gavelkind. But the question would not arise while it was appendant to the manor.

In 20 Hen. VI. Sir John de St. Leger died holding by knight-service the manor of Ulcombe, and a very large estate in the parishes of Little Chart, Pluckley, Frittenden, Lenham, Boughton Malherbe, &c. The former was held by this family by military tenure from the Conquest until the middle of the seventeenth century. It was given in francalmoigne in the tenth century to the Archbishops of Canterbury, and appears in every roll of knight's-fees since the reign of William the Conqueror. The latter estate, *inter alia*, included "half a yoke of land" called Roting in Pluckley, which had also been anciently held in francal-

[x] *Inq. post mortem* Joan de Montchensie, 1 Edw. II., and Hasted, viii. 14, 26.

moigne, and being alienated by the Abbot of St. Augustine's had become *socage*, without being converted into *gavelkind*. At the Conquest it formed part of the abbot's barony.

Another important estate of "ancient knight-service land" was held by Sir Robert Poynings, one of the "thirty or forty persons" mentioned in the Act of 18 Hen. VI. c. 2.

On his death in 25 Hen. VI., he was found to have held by military tenure the following manors, lands, and tenements:—

PARISH.	DESCRIPTION OF ESTATE.
*Tirlingham . .	Manor, land, &c.
Hastingleigh .	Advowson.
Westwood . .	Manor.
Leeds . .	Land.
Frittenden . .	Land.
Combsden . .	Manor.
Standen . .	Manor.
Hoking . .	Manor.
*Rucksley . .	Manor, advowson.
Horsmonden .	Manor, advowson.
Leveland . .	Manor.
Benenden . .	Land.
North Cray . .	Manor and advowson.
Horton . .	Manor.
*Knocking . .	Manor.
*Eastwell . .	Manor, advowson.

The manors marked * were held by castleguard rent-service to Dover Castle. The manor of Tirlingham included that of Newington Bertram, of which, with several rents-service from the freeholders, Sir R. Poynings died seised. The service due to the Crown from Tirlingham was the repairing a moiety of a certain hall and chapel in Dover Castle, and paying castleguard rents[y].

[y] Hast. viii. 165. Compare the service due from the Prior of Horton, viz. the repair of the Penchester tower in the same castle, before the service was commuted for a rent in money. Tirlingham was held of

Horsemonden was one of those estates which were held of the archbishop "*in capite* by grand sergeanty." (It has been said before that the archbishop assumed the style of a sovereign prince in this county. It was for this reason said in *Kirby Lee's Case*, that although no gavelkind were held *in capite* as of the Crown, yet certain gavelkind lands were held "*in capite* of the archbishop.") Horsemonden, however, was not of this last-mentioned kind. It is mentioned in the Red Book of the Exchequer *, the *Testa de Nevil*, and many times in the Escheat Rolls, to have been originally held by knight-service. It was one of the sixty-six military estates inherited by the heir at common law of Gilbert de Clare[z], and of which his widow was endowed.

* p. 182.

Leveland was another of the ancient possessions of the archbishop's. It was described in Domesday Book as "one suling in Levelant held by Richard, military tenant of the archbishop ('Homo Archiepiscopi,')" and entered among the "Terræ militum Archiepiscopi." In 5 Edw. I. Fulk Peyforer died, holding this manor *in capite* among other estates, and leaving four sons. It appears by the inquisition taken after his death, 5 Edw. I. 17, that "William his eldest son was the heir of all his estates held by military service (including this of Leveland), and that the said William and his brothers John, Richard, and Fulk, were the co-heirs of all the inheritable lands which were held in gavelkind by their father [a]."

It appears from the same inquisition and from the Pleas

the king by military service in 23 Edw. I. (See *Inq. post mortem* Bertram de Criol, 23 Edw. I. 78.)

[z] *Inq. post mortem*, 7 Edw. II. 68.

[a] "Sunt heredes totius hereditatis prædictæ quæ tenetur in Gavelikend."—(*Cal. Genealog.*, 252.)

of the Crown in 9 Ric. I., that the lords of the manor of Leveland had the sergeanty in Middlesex of guarding the king's palace at Westminster and the royal Fleet prison ("custodia liberæ prisonæ de Flete.")

Leveland was held in the same tenure by the great Lord Badlesmere, to whom free-warren was granted for this and twenty-three other military estates in 9 Edw. II. [b]

The free tenure of the rest of these estates held by Sir R. Poynings may be easily traced in the same manner from the date of the Conquest until his death, or till the abolition of the feudal tenures [c].

We find many other contemporary notices of lands descendible at common law. To take one or two out of many instances, we may mention particularly the manor and demesnes of Orlestone. Before the Conquest this estate had been held "by eleven socage tenants of the king." But at the Conquest it became a portion of De Montfort's barony, and about half was retained in demesne, the rest lying in gavelkind. William de Orlestone held it *in capite* by knight-service and castleguard [d]. The inheritance continued in his descendants until Mrs. Scott died in 12 Hen. VI., entitling her husband to hold a moiety of Orlestone by knight-service. It had been divided between her and a younger sister as co-heiresses in 7 Hen. V. * * Hast. viii. 362.

Again, the estate named Old Langport, in Lid, was held at the Conquest by knight-service of the archbishop, and

[b] Calend. Rot. Cart. 9 Edw. II. 57.

[c] Eastwell, which has been described before, was held by Matilda de Eastwell as two knight's-fees *in capite*. By the inquisition on her death 52 Hen. III. 32, it appears that it comprised 250 acres of arable, besides pasture, rents-service, advowson, profits of courts, &c., all which were inherited by her son Bertram de Criol.

[d] Esch. Roll 12 Edw. I. 19.

so continuously until Sir John Hund' died in this reign, holding it by the like tenure *.

* Hast. viii. 426.

Thus Crawton, a manor which had no free lands in demesne, is recorded by Hasted to have been "successively inherited by three brothers named Belknap" about this time †. The eldest brother, Sir Hamo Belknap, had also inherited the manor and demesne lands of St. Mary Cray, which had from the time of the Conquest been held of Dover by castleguard *in capite* and the petty sergeanty of providing gilt spurs for the king. It was therefore *socage* and not *gavelkind*, as shewn in the foregoing chapters.

† Ib. ii. 102.

Shebbertswell, an estate containing two sulings, was held before the Conquest in francalmoigne, and afterwards in barony by the Abbot of St. Augustine's. Immediately after the Conquest it was granted by the abbot to a tenant by knight-service, by a charter preserved in the Register of the Abbey, No. 177.

It is entered in the Book of Aid as having been held by castleguard of Dover Castle, having previously been simply held by knight-service. In the reign of Henry VI. it was owned by the family of Philipott ‡. Hasted informs us that *this manor*, with other estates in the parish, was alienated in 1785 *by co-heirs in gavelkind*. The sentences following explain what he meant in reality, viz. that the estate, *excluding the manor, mansion, and demesne lands*, was thus alienated. But in other cases he is not so explicit, and so has led to a mistaken impression that the whole estate has been divided among the customary heirs, when in fact only the gavelkind portions were so treated.

‡ Ib. ix. 377.

Thus, to give another instance, he asserted || that the manor of Stalisfield was divided among gavelkind co-heirs

|| vol. vi. 441.

at the end of the last century. This statement is very unlikely to have been correct, for these reasons. It was held *in capite*, one quarter of the land being in demesne from the Conquest until it was given to the Knight's Hospitallers, on the same terms as West Peckham and other estates before mentioned. At the Reformation it was given to Sir Antony St. Leger *in capite* to hold by military tenure. Moreover, while he so held it, all his customary lands were disgavelled in 2 and 3 Edw. VI. The manor, therefore, could not be gavelkind for a double reason.

The same mistake was either committed in reality, or imagined by the same writer to have been committed, in the case of the manor of Nutsted, half the lands of which were in demesne, and held by ancient knight-service. It was enumerated among the military lands of Dover Castle in the Red Book of the Exchequer, p. 197, and in the Book of Aid, 20 Edw. III., as one knight's-fee. In the reign of Henry VI. it was held by Hugh Brent.

To return to the consideration of the ancient knight-service lands held by the "thirty or forty persons" mentioned in the statute of 18 Hen. VI., we find that Woods-Court, in Badlesmere, was descendible to the eldest son, in the same manner as the superior estate of Badlesmere. Both are mentioned in the various rolls of knight's-fees, the Feodary of Kent, &c. In 19 Edw. III. Woods-Court was held in socage *in capite* by the service of finding a hawk or two shillings yearly for the king. Guido Atwood held it at the end of the reign of Henry VI. *

* Hast. vi. 478.

The peers owning lands in Kent were not included among the persons named in the statute; they did not sit as jurors in cases of attaint, and therefore could not be among those who were "continually harassed" by this duty. But it is quite certain that much of the "ancient

knight-service lands" in Kent were held by the peers in the reign of Henry VI.

Without needlessly swelling out a long array of instances, we will give two proofs only of this fact, the inquisitions taken on the deaths of Humphry, Duke of Buckingham, and Edmund, Earl of March, in 39 Hen. VI. and 3 Hen. VI. respectively.

The former recounts the military estates of which the Duke died seised (38, 39 Hen. VI. 59), and which were inherited by his *eldest* son as heir male[*]. The list of these estates comprised, *inter alia*, the manor and castle of Tonbridge, and manors and demesnes of Hadlow, Dachurst, Brasted, and Vielston, or Filston, all held in sergeanty of the archbishop and by knight-service from the Conquest downwards.

In addition to these he held by the same tenure the following estates:—

PARISH.	ESTATE.
Eatonbridge	Manor.
Penshurst	Manor, park, lands.
Havenden Court	Manor, lands.
Ensfield Farm	Lands.
Yalding	Manor.
Bay Hall	Manor, lands.
Henhurst	Manor, lands.
Brenchley	Manor, lands.
East Barming	Lands.
Upper Hardres	Manor, advowson, land.
Sheldwich	Land.

besides ten other knight's-fees and a-half. Many of these estates had reverted to the king (Henry VI.) as heir to Humphry, Duke of Gloucester, who died in in the 25th year of that reign. After the death of the Duke of Buck-

[*] Dudg. Baron., i. 166; Hast. v. 214.

ingham a great portion of his estate was again resumed by the Crown[f].

As to the numerous knight's-fees held by military service of the Archbishop and the Bishop of Rochester in this reign, it will be sufficient to refer to the Red Book of the Exchequer, 132, the amount of their estates not having been altered before the reign of Henry VIII.

In the same place will be found the description of the fifteen knight's-fees of St. Augustine's Abbey, in the list of "tenants by barony and military services throughout the county of Kent."

The other inquisition, as above-mentioned, was taken on the death of Edmund, Earl of March, who held of the Crown, in 3 Hen. VI., more than nineteen knight's-fees—a very large estate. The list includes the following manors, lands, and tenements:—

NAME OF ESTATE.	PORTION OF KNIGHT'S-FEE.
Kingston	$\frac{1}{6}$
Watringbury	$1\frac{1}{2}$
c. Luddesdon	$1\frac{1}{4}$
c. Moreston (Murston)	1
c. Gravesend	$\frac{1}{8}$
c. Swanscombe	$\frac{1}{8}$
c. Addington	$\frac{1}{10}$
Eslingham	$\frac{3}{4}$
East Preston	$\frac{1}{4}$
c. Boughton Monchelsea	$\frac{3}{4}$
Dupton	1
c. Erith	$\frac{1}{2}$
c. Ripley	1

[f] *Inquis. de Diversis Annis*, Hen. VI. a, No. 5, Kent. As to the manor of Eatonbridge, see Palgrave's *Rotuli Curiæ Regis*, vol. ii. p. 117. As to Penshurst and the other estates above mentioned, see *Inq. post mortem* 35 Edw. I. 47, Earl of Gloucester, and 2 Edw. II. 66, Mary de Penchester.

NAME OF ESTATE.	PORTION OF KNIGHT'S-FEE.
Liming	1
Eythorne	½
Stonepit	¼
Ham	½
c. Bicknor	½
Natington	⅛
Newington	¼
c. Chilham	1
Parrock	1
Eversfield	½
Harty	⅛

These, with other lands specified in the inquisition, made up more than nineteen fees descendible at common law[s]. It is needless to trace the free tenure of all these lands from the Conquest downwards; some of them (marked *c.* in the above list) have been mentioned already among the estates held by castleguard; the history of the others may easily be found by any person interested. There is no difficulty in general in proving the tenure of those lands and manors which formed portions of the great baronial estates; but it is sometimes hard to do so in the case of small estates which were unimportant in ancient times.

There are, however, one or two points to be noticed in this inquisition.

Swanscombe at the time of the Conquest was a very large and important manor held in barony by Odo of Bayeux. It contained no less than ten "sulings" of arable land, including the three ploughlands of demesne. Soon afterwards the tenure was changed to castleguard of Rochester Castle, and the services were later commuted for a money rent. This manor was owned by the great Kentish family of Montchensie. William de Monte Canisio,

[s] *Feoda Militaria Edmundi Comitis Marchiæ*, 3 Hen. VI.

or Montchensie, died in 38 Henry III., holding it of the king by military service, and of his two sons, William and Thomas, was succeeded by the eldest as heir at common law[h].

In 7 Edw. II. it was found to be held *in capite* by homage and rent-service, i.e. in socage, though not in gavelkind; and we further learn from the important inquisition taken on the death of Edmund of Woodstock, Earl of Kent, in 4 Edw. III., that the service consisted in fealty and a yearly castleguard rent ("per servicium reddendi annuatim prædicto Castro Roffensi") of £4 4s. 0d., and 8s. 4d. at the king's Exchequer for all services[i]. *Wicham* and many other estates in Kent are mentioned in the same record to have been held of the king in socage in the same manner.

But Hasted* speaks of the subsequent descents of this manor in terms which seem to imply that it was divided in the last century among co-heirs in gavelkind, although in the preceding sentence he had written, "The eldest son inherited this manor[j]." * vol. ii. 412.

The manor of Erith, or Lesnes, was held in barony by Odo of Bayeux, and afterwards in the reign of Henry II. its owner paid aid for it as a military fee, both towards the expenses of marrying the king's eldest daughter, 12 Hen. II. It also paid *scutage* in 18 Hen. II., 33 Hen. II., and 2 Ric. I. This manor, with half the demesne lands,

[h] See Hast. ii. 405, and compare *Inq. post mortem* 14 Edw. I. 69, and 16 Edw. I. 78.

[i] Esch. Roll, 4 Edw. III. 38.

[j] Among other illustrations of the freedom of the tenure of these lands held of Rochester Castle, the *Pedes Finium* shew that the demesnes of the manor of Eccles were "out of gavelkind," the widow receiving one-third as her dower at common law. (Kent. Arch. Soc., v. 288. See Hasted iv. 433.)

descended to the heir at common law of Richard de Lucy *, who had held it apparently by castleguard.

* Hast. ii. 231.

In 12 Hen. III. we find that Roysia de Dover and Richard de Chilham, her husband, recovered this estate *by writ of right and trial by battle.* It was shewn in a former chapter that this is a plain proof that no part of the land recovered was gavelkind [k]. The case of *Lowe* v. *Paramour* †, on which Robinson founded a doubt whether trial by battle was not allowed in actions for customary lands, has been shewn not to be applicable, the land there in dispute not being gavelkind as he supposed, but shewn by all the ancient rolls of knight's-fees to have been originally and continuously held in a military tenure. The estate recovered in *Lowe* v. *Paramour* is mentioned in the inquisition which we are now considering, *scilicet*, two-thirds of a knight's-fee in Harty.

† Co. Ent. 182.

In 56 Hen. III. the manor of Erith was found to be held of the king by homage and fealty *in capite* [l]; and in the next reign it was declared by a jury to be a member of the barony of Chilham [m]. Sir Giles de Badlesmere held it as two knight's-fees by castleguard in 12 Edw. III.; but in 3 Ric. II. the jury impanelled on the death of the Earl of March returned a verdict that this estate was held *in capite*, "sed per quæ servitia juratores ignorant." This was equivalent to finding a tenure by knight-service, "for the best shall be taken by the king ‡;" accordingly it was so held until the Act 12 Car. II., c. 24.

‡ 2 Inst. 692; 12 Co. 135.

Eythorne, which was held by the Earl of March in the

[k] See *ante*, *Pettes* v. *Barnard*, and see Dyer, Coll. 201 a.

[l] *Inq. post mortem* Richard and Roysia de Dover, *incert.* Hen. III. 237; Cal. Geneal. 181.

[m] "In capite tanquam membrum baroniæ de Chilham."—(*Inq. post mortem* Joanna de Dover, 33 Edw. I. 183.)

same tenure, had originally been held in francalmoigne by the monks of Christchurch in Canterbury*. But since the Conquest it has always been included among the "ancient knight-service lands" of the archbishops, as we learn, *inter alia*, by this inquisition. The freedom of its tenure was proved afterwards in the reign of Elizabeth:—

* Hast. x. 64.

"An assize was held 42 Eliz. to prove by verdict between *Forth* v. *Rither* if these lands (the manor and demesnes of Eythorne) were gavelkind, on a writ of dower; when there were many rolls of the Archbishop produced to prove that they were held of the archbishops by knight-service, and a verdict was given accordingly for the plaintiff†."

† Ibid. 66.

Moriston, or Murston, also mentioned in this inquisition, was in the reign of Edward I. held in the same manner by Thomas Abelin, as appears from the Escheat Roll of 24 Edw. I. The jury summoned on his death found that he held it as one knight's-fee *in capite* by the service of one knight, and that Isolda his widow was endowed of the third part of the manor and lands at the common law[n].

Gravesend was found, two years later, to be also held *in capite* by Henry de Cramaville in the like manner[o].

These inquisitions will serve to establish the statement, that much free land descendible at common law was held by the peers at the time when the statement was made that "well-nigh all the county was gavelkind." We know indeed from other sources that the amount of free land was the same in every reign, for nothing could ever change the nature of the demesnes of a manor originally held by

[n] *Inq. post mortem* of Thomas Abelin, 4 Edw. I. 21; of Nicholas Abelin, 6 Edw. I. 17; and Isolda de Apperfield, 24 Edw. I. 46.

[o] *Inq. post mortem* taken on his death, 26 Edw. I. 21.

knight-service. There is, however, this advantage in multiplying the instances of a rule which cannot be disputed, that each verdict of a jury quoted from the records of the Exchequer carries with it sufficient weight to establish the free or customary nature of the particular lands mentioned in it, and leaves no room for the application of the common presumption. However ancient the record, the presumption of gavelkind tenure has no force against it, supposing the evidences of the identity of the land to be complete. For this reason several other illustrations of the general rule, that the lands originally held in military tenure are now descendible to the eldest son, will be added to those given above.

CHAPTER XIV.

Tenure by Knight-service (continued).

Importance of the record named the Feodary of Kent.—Its history.—Tenures *in capite*.—Gavelkind held *in capite*.—Other records.—Hundred Rolls.—List of military lands.—Escheat Rolls.—Manors of *WESTBERIES, HAGHNET, TRIENSTONE*.—Descent at common law of lands in *FRINSTED, ASHURST, HOLLINGBOURNE*.—Free land and gavelkind in *MONINGHAM, NETTLESTED*.—Descent at common law of manors and lands in *DARTFORD, STONE, LITTLEBROOK, SWANSCOMBE, YALDHAM*, and *IGHTHAM*.—Manor and advowson of *BECKENHAM*.—Descent at common law of manors and lands in *EAST BARMING, WICHLING, FRINSTED, LEVELAND*.—Estates of the Northwood family.—*BOUGHTON MALHERBE, SHALMSFORD, GRAVESEND, COCKRIDE* in *BILSINGTON*.—Case of *Cheyney* v. *Edolfe*.—Free tenure of *BLEANE* and *HOADE COURT*.—Forest of Bleane.—Question concerning tenure of woodlands.—Manors of *PAUL'S CRAY, FOOT'S CRAY, NORTH CRAY, HOO ST. WARBURGH*.—Free lands in *ORLESTONE* and *ROMNEY*.—Free and customary portions of *IFIELD* and *HEVER COURT*.—Early history of *BOUGHTON ALUPH*.—Its tenure.—Division among heiresses.—Question respecting its tenant by the curtesy of England.—Subsequent notices.—Pleas of the Crown.—*BOYNTON* in *SWINGFIELD*.—Dispute as to tenure of waste land.—*CHARING, ICKING*.—Early history of *BURMARSH* and *BEAMSTON*.—Case of *Finch* v. *Finch*.—*STURRY*.—Free lands in *SNAVE, GARWINTON*.—Other estates of St. Augustine's Abbey.—*STODMARSH, OWLIE, BRISHING*.—Proofs of tenure.—Subdivision of estates.—*SUTTON COURT, BERE COURT*.—Evidences of military tenure.—*GOODNESTON, GODWINSTON* by *SITTINGBOURNE*.—Roll of Blanch-lands.—Liberty of the Duchy of Lancaster.—*LOWDEN, CHELSFIELD, BRABORNE, FARNBOROUGH*.—Other lands described in the Roll.—*FRENSHAM* in Rolvenden.—*SELLING, DARBIES COURT*.—*Lowe* v. *Paramour*.—The Long House farm.—*CHAMPIONS COURT*.—Castle and manor of *ALLINGTON COBHAM, ORKESDEN*, and *VIELSTON*.—Records relating to *NEWINGTON* and *DIMCHURCH*.—Descent to eldest son.—*TOTTINGTON*.—Rectory of Leybourne.

HAVING now shewn that the amount of land descendible at common law and held by the "thirty or forty persons" mentioned in the statute 18 Hen. VI. c. 2, was by no means inconsiderable; and further, that this statute took no account of the great amount of demesne land at that time owned by the spiritual and temporal peers and the ecclesiastics of inferior rank; we may now notice a few of those statements which are found scattered in the records of various reigns, and which establish in each case the free tenure of one or more estates in Kent.

The most important of the records concerning the whole county, after the Book of Aid above mentioned, is undoubtedly the Feodary of Kent, or list of the ancient knight-service lands of Kent mentioned in the *Testa de Nevil* and other rolls of knight's-fees, but especially in the Book of Aid of 20 Edw. III. It was compiled in his official capacity, and placed in the Exchequer by Cyriac Petit, the Feodary of the county, at the end of the reign of Henry VIII. He added to the ancient record of 20 Edw. III. his own notes, and gave in a compact table the ancient and modern name of each estate, the names of the superior lords and immediate tenants in the reign of Edward III. and Henry VIII. To this he added the amount of military service, or castleguard rent (as the case might be), due from the land, and any particulars relating to the tenure which were of exceptional importance, citing very often inquisitions *post mortem* during several reigns, and other documents of importance, to shew the free military tenure of the land. The great value of these notes to a student of tenures will appear both by the quotations made from them in this chapter, and from the wording of the description which he himself affixed to his work, as finally completed and ready for use in the Exchequer and

the Court of Wards and Liveries. A portion of this description runs somewhat as follows in English:—

"This is the Book of the reasonable Aid levied in the time of King Edward III. on the occasion of knighting his eldest son in the 20th year of his reign, and now remaining in the Exchequer. This book of the knight's-fees in Kent has been amended and renovated with greater freshness and clearness as to the names of all the possessors and proprietors of those lands, and also the names by which the lands themselves are now called or known, by Cyriac Petit, the king's Feodary in Kent, as well from the testimonies, relations, and admissions of the possessors and proprietors in those times and the present, as from the evidence and declarations of divers trustworthy persons in each hundred throughout the county of Kent in the 35th year of King Henry VIII.," &c.

But the rule of law, that no lapse of time can alter the original tenure of any land in Kent, renders it important to consult the earlier as well as the later sources of information respecting tenures *in capite* and by knight-service in this county.

It must not be forgotten that gavelkind land could not be held *in capite*, as shewn in an earlier chapter. It might of course be held directly of the king as part of his ancient demesne, or as part of an honour or manor escheated or purchased by him. But such a tenure was not strictly *in capite;* it is properly described as a tenure "in capite ut de honore," or a tenure of the king "ut de honore et non in capite." In the early records tenure in chief is confined to those estates which were held of the Crown by a tenure originally created by the king[a]. But since the reign of Henry VIII. both kinds have been named

[a] Co. litt. 108 a, n.; Madox, Exch. 432.

indiscriminately "tenures *in capite*," a practice which has frequently caused confusion. When tenants *in capite* are mentioned in this chapter, only those will be meant who can properly be so called in the original sense of the term.

Besides the estates, which were shewn earlier to have been held of the king in gavelkind from being included in his manors of ancient demesne, we may notice the following. Margaret de Penshurst was found by inquisition in 2 Edw. II. to hold "in gavelkind of the king *in capite*" a house with lands and wood in Tunstall, Bredgar, and Milsted, with certain rents of assize, by the service of paying a yearly rent and making her suit to the king's court at Milton. These lands, in fact, were all within the manor of Milton, and therefore of the nature of ancient demesne. Otherwise it could not have been correctly called a tenure *in capite*.

In precisely the same way we find recorded in an inquisition of the date of 2 Edw. II. that Henry de Cheveney held *in capite* the gavelkind manor of Cheveney, which was socage, and part of the ancient demesne of the king's manor of Milton *.

* Hast. vii. 54.

In the first place, then, those enquirers who wish to know what lands were held *in capite* by a military tenure in the fourteenth century, should consult besides the documents before mentioned, the Hundred Rolls, of which portions have been published by the Record Commissioners. The following short extract will demonstrate their utility in determining the tenure of Kentish estates.

"Hund. Roll 3 Edw. I. 8, Kent: Hundred of Eyhorne.—The jury further find that Hugh de Gerunde has half a knight's-fee in Wrensted held of the king *in capite;* that William de Peyforer has half a fee in Wichling held in the same manner; that Hamo

de Gatton has a whole fee in Boughton and Wormsall held by castleguard of Dover Castle of the king *in capite;* that Sir Rob. Septvans and Lady Margaret de Valoignes hold in the same manner two fees and a quarter in Aldington, owing service of castleguard to Rochester Castle. Further, that the abbots of St. Augustine's have held Lenham of the king from very ancient times; that Nicholas de Criol, the king's ward, holds one knight's-fee and the sixth part of one in Stockbury by service of castle-guard, which lands are now held under the king's grant to Gregory de Rucksley; that Sir William Leybourne holds one fee in Leeds for Sir A. Crevequer, who is tenant *in capite* of the same..... Twyford Hundred.—The jury find that the Earl of Gloucester holds *in capite* the manor of Yalding, which is parcel of the barony of Clare; and Sir Rob. Crevequer holds in the same way Thurston and Farleigh of the king, as parcel of the barony of Chatham..... Bromley Hundred.—The jury find that Foxgrave in Betham is of the king's fee, and it was lately held by John Malmains of Robert Aiguillon as one-fourth of a knight's-fee, but when or how it was alienated they know not[b]," &c., &c.

The Escheat Rolls and Fine Rolls for the earlier reigns, extracts from which have been published by the Secretary of the Record Office under the inspection of the Master of the Rolls, afford still more minute information of the same kind. Frequent references have been already made to the *Calendarium Genealogicum* and the *Excerpta e Rotulis Finium*, and a few more extracts are given here as specimens of the important information to be gained from them on the special subject of the present enquiry. It must be remembered that they are transcripts of the official records preserved in Chancery and the Exchequer, and that their statements were all made originally on the oaths of juries

[b] See Hund. Rolls, *temp.* Edw. I., pp. 196—237.

summoned to enquire into the tenure, services, &c., of the lands mentioned in them[c].

In the reign of Henry III. one Aluph de Rucking was owner of the manor of Westberies, being a moiety of the manor of Rucking and of Haghnet, which seems to have been the ancient name of Aghne Court in Old Romney[d], besides other lands and tenements comprised within their bounds. On his death, in 34 Hen. III., it was found by verdict of a jury that "Thomas, his first-born son, was his heir as to all the land which was held by military service, and the said Thomas and his brother were co-heirs of all the rest of the land which was held in gavelkind." There were certain rents-service, which descended to the eldest son[e].

* Hast. viii. 261.

Trienstone was in the same reign held by castleguard * as part of the barony of the Lord Warden. It is men-

[c] "It must be borne in mind," says the learned Secretary of the Record Commission, "that there are hundreds who now seek to obtain information from these records on a great variety of subjects (see lists of these subjects in Repp. 23—26 of the Deputy Keeper of the Public Records), and that their number will surely be increased in proportion as the records become more generally known, and their contents more clearly denoted by indexes and calendars."—(*Cal. Gen.* preface, ii.)

[d] Hasted does not give any detailed account of the ownership of Westberies before the time of Henry IV. It appears, however, that the whole manor of Rucking was very anciently given in francalmoigne to the monastery of Christchurch. At the Conquest it formed part of the barony of Hugh de Montfort, but was recovered by Archbishop Lanfranc in the Plea of Penenden Heath. (See Cotton. MSS., Claud. C. 6, "Hæc Willielmus I. reddidit Ecclesiæ Christi pro Deo et pro salute animæ suæ gratis et sine pretio.") The list includes Rucking. Part of it, however (Westberies), was retained by De Montfort, and held of him by military service, as recorded in Domesday Book. The portion recovered by Christchurch contained 100 acres of gavelkind land. (Somner, App. 187; Hast. viii. 355, 441, 472.)

[e] *Inq. post mortem* A. de Rucking, 34 Hen. III. 17.

tioned in the *Testa de Nevil* as having been anciently held by knight-service, and a full account of its early history is preserved in an inquisition of escheat 36, 37 Hen. III. 82*:—

* Cal. Gen. 47.

"All the jurors declare on their oath that this land was given immediately after the conquest of England to a knight named Trian, who held it during his life, as after his death did his son and heir Hugh, and after the death of the latter Robert Trian, his son. So that the said Trian, Hugh, and Robert held it without any adverse claim from the time of King William the Bastard until the time of King John, who took it as an escheat, together with the other lands then held by Norman barons in England, and banished the said Robert Trian, the last tenant, from his realm of England."

It was then granted to the *Maison Dieu* in Ospringe, in which ownership it continued during the reign of Henry VI., and until that religious foundation was dissolved in 20 Edw. IV.

The next case is even more important. Nicholas de Gerunde died in 52 Hen. III., tenant of the manors, advowsons, and demesne lands of Frinsted and Ashurst, and lands held in Hollingbourne of the prior and monastery of Christchurch in Canterbury. The jury summoned at his death returned a verdict that "Hugh de Gerunde, the first-born son of the said Nicholas, is heir to his lands[f]."

This verdict indirectly establishes what was said in a preceding chapter as to the freedom from gavelkind qualities of demesne land originally held in francalmoigne. The whole manor of Hollingbourne was thus held by the

[f] *Inq. post mortem* 52 Hen. III. 15.

monks of Christchurch at and before the Conquest; at the latter time they had half a suling in demesne, part of which must have formed the land inherited by the heir at common law of Nich. de Gerunde.

The inquest on the lands of Simon de Criol, 52 Hen. III. 34 (translated Kent. Arch. Soc., v. 297) shews that his widow, Matilda de Eastwell, as before noticed, was tenant *in capite* of two knight's-fees in Ashford, Sevington, Packmanstone, and Esture, viz. three carucates of land with their appurtenances, and the advowson of Ashford by castleguard. . . .

But that Simon de Criol *held nothing in capite*, but he held *in gavelkind* 240 acres at Moningham, and other lands elsewhere, of the same tenure, to which his eight sons were co-heirs, and of which his widow had a moiety for her free-bench.

In the same place is a translation of the inquisition *post mortem* of Roland de Axsted, 54 Hen. III. 22, by which it appears that he held half a knight's-fee in Nettlested, viz. 50 acres of arable, with meadow, wood, garden, profits of court, rent-service from the socage tenants, &c.

Also that he held there 11½ *acres in gavelkind.* Also the manor of Hylth and other lands, of all which his son Roland was the next heir.

* v. 121. Hasted* quotes a passage from the Book of Aid, 20 Edw. III., to the effect that the military aid was paid by Sir Thomas Pimpe and his mother "for the manor of Nettlested, the manor of Hylthe and Hylthe Park, with other lands in Nettlested and Hylthe, . . . held of the Earl of Gloucester, chief lord of the fee." In 11 Hen. VII. this estate was still held by knight-service by a descendant of Sir Thomas Pimpe.

Many other valuable translations of similar records

are contained in the volumes published yearly by this Society.

Passing to the next reign, we find that Laurence de Broc, or Brook, held lands in Darent and Dartford[g], and the manors of Littlebrook and Stoneplace, in Stone, and lands and tenements in Swanscombe; all which were inherited by his *eldest* son, as heir at the common law[h].

In the next year Thomas de Aldham died tenant of the manors and demesne lands of Great Yaldham, West Yaldham, St. Cleres in Ightham (which were divided in the reign of Edw. II. between co-heiresses), and certain other lands and tenements comprised within their bounds *.

* Hast. v. 16, 87.

"And the jurors being asked who was the heir of the said Thomas, say that of the military lands (*feodo militari*) aforesaid one Baldwin, son of Thomas de Aldham, is the heir; and of the socage land aforesaid the same Baldwin, and his brother William, are co-heirs[i]."

These socage lands were afterwards disgavelled by Reginald Peckham, 2 and 3 Edw. VI. The rest were held by knight-service until the abolition of feudal tenures[k].

In the year following Sir Richard de la Rokele, or *De Rupellâ*, died seised of the manor, advowson, and demesnes

[g] See Hasted, ii. 373, 374, 389.

[h] *Inq. post mortem* 3 Edw. I. 10.

[i] *Inq. post mortem* T. de Aldham, 4 Edw. I. 45.

[k] The tithes of Yaldham were anciently given to the Priory of Rochester. This grant, cited Reg. Roff., 117, and the Parliamentary Survey of 1649, shew that the manor of Great Yaldham contained 142 acres. According to the Feodary of Kent it was held *in capite* by Reginald Peckham in 35 Hen. VIII., who was succeeded by James Peckham, his son and heir.

of Beckenham, which is held as one knight's-fee *in capite.* He was succeeded by his *eldest* son and heir[1].

At the same date Manasser de Hastings was found to hold of the king by grand sergeanty the estate called the Grange in Gillingham[m] *.

* Hast. iv. 236.

In the same year it was recorded by a jury that Fulk Peyforer held the manors of East Barming, Wichling[n], Yokes Court in Frinsted, and others by knight-service (as may also be seen by the Book of Aid, 20 Edw. III.), and Colbridge Castle, with other lands in Boughton Malherbe; and that his eldest son was heir of his military lands, and all the sons together of his gavelkind tenements. Among these military lands was the manor of Leveland, as mentioned above in this chapter.

The lands held by Roger de Northwood are enumerated in the same record, taken according to an inquisition 13 Edw. I. 25. They included the manors of Little Hoo, Harrietsham, Northwood, Newton, and Middleton, with others held by knight-service, and certain gavelkind tenements, disgavelled, however, by the king's charter, 16 Hen. III.

In 20 Edw. I. Hamo de Gatton died holding *in capite* by knight-service the manors and demesnes of Boughton

[1] "Idem Ricardus habet legitimum heredem, Philippum nomine, primogenitum suum."—(*Inq. post mortem* 5 Edw. I. 6.) For the later history of this estate, see Hasted, i. 529.

[m] *Inq. post mortem* 5 Edw. I. 7; *Testa de Nevil*, 219.

[n] Wichling. "This manor," says Hasted, "was in the reign of Henry VII. in the tenure of I. Digges, Esq., of Barham, who died possessed of it in 19 Hen. VII., holding it, as was found by inquisition, of the dean and canons of St. Stephen's Chapel in Westminster, by homage and fealty and the service of three parts of one knight's-fee, and a yearly payment to the king's castle of Dover. . . . There was payable out of it 6d. (to the king), to the sheriff 25s. for *Blanch-rent*, and 1½d. for castle-guard-rent to Dover Castle."—(vol. v. 551.)

Malherb and Gatton; William de Shamelesford held of him the estate of Shalmsford Bridge by the same tenure [o] *. * Hast. vii. 310, v. 399.

Henry de Cramaville and Joanna his wife were found, in 26 Edw. I., to hold jointly of the king *in capite* the manor of Gravesend by the service of paying yearly 12s. 8d. castleguard rent to Dover Castle, and 2s. to the sheriff, and of attending the sheriff's tourn and leet twice in each year [p].

The free tenure of the demesne lands of the manor of Kenardington has been shewn above, notwithstanding the assertion of Hasted that they were gavelkind [q].

But there was another estate which for many generations descended in the same course of ownership as that manor, respecting the tenure of which similar doubts have before this time arisen. This is the manor, or reputed manor, of Cockride in Bilsington.

We find by the proceedings in the Chancery suit between *Cheyney* v. *Edolfe*, in the 3rd year of Queen Elizabeth, that this manor, with many other lands and tenements in Romney Marsh, and elsewhere, including Great and Little Perry, a marsh in Harty, Craythorne manor and advowson in the parish of Hope, lands called Tillade and Kingsmarsh in Romney Marsh, &c., were asserted to be held in gavelkind. Without going into the history of the other lands, it may be noticed that several records bear witness to the free tenure of Cockride manor while it continued part of Kenardington.

Thus the documents cited in the last note agree in de-

[o] *Inq. post mortem* Hamo de Gatton, 20 Edw. I. 25.

[p] *Inq. post mortem* H. de Cramaville, 26 Edw. I. 21.

[q] Hast. vii. 248. See *Inq. p. mort.* T. de Normanville, 11 Edw. I. 37, and assignment of dower of Dion, wife of T. de Normanville, jun., 11 Edw. II. r. 68; *Inq. p. mort.* of this T. de Normanville in 1 Edw. II.

scribing "Kenardington cum Cockride" as being held *in capite* by military service of castleguard; and in *Cheyney* v. *Edolfe* reference is made to a family settlement contained in the will of Sir J. Cheyney of Shurland, dated in 7 Edw. IV., which described the same tenure *in capite.*

Cyriac Petit mentions other evidences in the Feodary of Kent to the same effect, viz. the inquisition taken on the death of Roger Cheyney in 15 Hen. VII., and another on the death of Roger Cheyney in 4 Hen. VIII.

The manor of Bleane and Hoade Court in the hundred of Whitstaple affords another example of the rule which we are discussing. The estate (which had been the property of King Edward the Confessor) was given to Hamo de Crevequer as parcel of his barony, to hold *in capite.* It contained one "suling," of which about a quarter lay in demesne, according to the entry in Domesday Book*. Sir Hamo de Crevequer, who died in 47 Hen. III., has been mentioned above in the notice of the manor of Buckingfield. "He was occasionally styled Sir Hamo del Bleane in ancient deeds" relating to this manor of Bleane and Hoade Court. The inquisition taken on his death, 47 Hen. III. 33, shews that he was succeeded in it by his heir at common law, Robert de Crevequer; whereas all his customary lands and tenements were divided among the same Robert and five other heirs male.

*Hast. viii. 525.

Hasted notices that in a subsequent reign the manor was part of the dower of Margaret Lady Ros, who joined with her son, in 32 Edw. III., in granting it to Eastbridge Hospital in perpetual alms[r].

[r] "In the rentals of the manor of Blean mention is made of the payment of 'gate-silver,' a custom not often met with. It seems to be a payment made by the tenants of the manor for the repair of the gates leading to and from the Blean to prevent their cattle from straying and

Still keeping to the Book of Aid, we find it recorded, that John de Traly inherited from his father in 32 Edw. I. the manor and advowson of Paul's Cray, held of the honour of Albemarle by knight-service[s]. Another portion of this manor, being the estate called Kitchengrove, was held as half a knight's-fee by another family[t].

Hasted's account does not seem to be accurate. He speaks only of "some lands in Paul's Cray" alienated to the family of Traly, the manor remaining with Simon de Cray. The inquisition above quoted records that "Eleanor, mother of John de Traly, held the manor of Cray (as part of his inheritance) in dower, and *also* certain other lands which she and he together had acquired in the same place *." * Cal. Gen. 663.

He gives some valuable extracts from the Book of Aid, viz.:—

1. "John de Campaigne paid aid in 20 Edw. III. for

being lost."—(*Hast.* v. 530.) *The Blean* was anciently a forest belonging to the king, and is still a thickly-wooded district, called the Ville of Dunkirk. It is said that a keeper of this forest was appointed as late as the reign of Elizabeth by letters patent.

It was for the most part alienated by the Crown in very early times. Part was given to the priory of St. Gregory by Henry II., and the gift of another part to the abbey of Faversham was confirmed by the same king. Almost all the remainder was given to the Prior of Christchurch by Richard I., to hold by the service of paying to him one pair of gloves yearly, i.e. by socage *in capite*, a tenure in which hardly any of the possessions of that monastery lay. The custom of "gate-silver" has been shewn in an earlier chapter to have prevailed throughout the Weald of Kent.

It might be a difficult question to decide whether particular woodlands in this district can be treated as gavelkind. At any rate, where such land has been cleared within time of memory, we may notice that it was originally the king's forest, and then held *in capite* by ecclesiastics until the Reformation.

[s] *Inq. post mortem* 32 Edw. I. 37.

[t] See also *Inq. post mortem* Margaret Scrope, 1 Hen. VI.

half a knight's-fee, held formerly of Simon de Cray in Crey Paulin, by Peter de Huntingfield and Simon, at Brook."

2. "John de Pulteney and others paid for half a knight's-fee parcel of Paul's Cray, called Kechyngrove."

3. Of Foot's Cray he says, "In the Book of Aid is entered thus: 'Of Sir Simon Vagen and the Prior of Southwark for one fee in Fotis Crey, which the heirs of T. de Wardroba and the tenants of Rob. Crevequer held of Hamo Crevequer, of which Simon holds a moiety ... and the Prior holds the other moiety, in the fields called Le Hoke and Craywood in this parish.'"

4. Of North Cray: "In 20 Edw. III. it was held by Rog. de Rokesle and his co-parceners as half a knight's-fee[u]." These co-parceners, *portionarii*, are not co-heirs, but the persons of different names and families among whom the whole fee had been subdivided by sales, or marriage with heiresses.

There is no space here for citing many of the important inquisitions of the reign of Edward II. The following extracts from summaries preserved in the British Museum may serve as a sample of the valuable information to be gathered from them. It is to be hoped that the contents of the records themselves may soon be published in a continuation of the *Calendarium Genealogicum*.

In 12 Edw. II. Hugh Pointz was found to hold half the manor demesnes and rents of Hoo St. Warburgh of the king by knight-service. The other portion was held in the same tenure by Hugh Grey as half a knight's fee[x].

[u] Hast. ii. 127, 130, 144.

[x] Hasted tells us that in the reign of John, Hubert de Burgh, Earl of Kent, had been tenant of Hoo St. Warburgh, "on whose disgrace it seems to have become vested in Henry Grey and Hugh Pointz in right of their

Another inquisition of some importance is that of John de Orleston in the same reign, omitted in Hasted's history, where however the *Inq. post mortem* of William de Orlestone 12 Edw. I. 19, is cited. This last document contains the assignment of dower at common law to the widow of the tenant.

John de Orlestone was found to be the king's tenant *in capite* by knight-service of two knight's-fees in the manor from which he took his name. These included a mansion or capital messuage, with 64 acres of arable, 30 acres in a place called Long Heath, 66½ acres in Romney, 60 acres in Rucking, 11 acres in Marston, and 6s. 7d. rent-service from his freeholders. None of these tenements were gavelkind.

The following is also an important piece of evidence. In 34 Edw. I. Thomas de Hever, *alias* de Ifield, was found by inquisition to have held the manors of Ifield Court in Northfleet and Hever Court in Ifield, with certain lands in them, of the archbishop by knight-service, and also 64 acres of gavelkind "*in capite* of the archbishop[y];" of the former his eldest son was heir, of the latter both his sons together[z].

Before leaving the consideration of these early inquisitions it may be well to trace by them with more minuteness the early history of one manor, both because the account given by Hasted is somewhat meagre, and in order to shew how many different proofs of the freedom

wives," co-heiresses of a previous owner. He cites the *Inq. post mortem* of Nicholas Pointz, 1 Edw. 46 (1 Edw. I. 17, in Cal. Gen.), Hast. iv. 5.

[y] See *Browne* v. *Brooks*, 2 Sid. 153, for the meaning of this expression. "Nota que fuit dit que nul gavelkind terre fut tenus in capite, mes aseun fuit tenus in capite de l'Archevesque per le Charter de Roy."

[z] *Inq. post mortem*, 34 Edw. I. 55.

from gavelkind qualities of lands anciently held by knight-service may be gathered from the inquisitions respecting one estate even in the limited period of two reigns only.

Boughton in the Bush, named Boltune in Domesday Book, is a manor which before the Conquest belonged to Earl Godwin, and afterwards to King Harold his son. It was therefore "thane-land," or *allodium* *. This estate afterwards formed part of the barony of Eustace, Earl of Boulogne, to whom it was given by William the Conqueror. The following extract is from Domesday Book:—

* Hast. vii. 386.

"The Earl (of Boulogne) has Boltune. Earl Godwin held it. It paid tax then, and pays now, for seven sulings. There are thirty-three ploughlands of arable, of which three are held in demesne, and thirty held by sixty-seven *villani* (socage tenants) and five husbandmen. . . . . Twenty-six acres of meadow-wood for feeding two hundred swine," &c.

"It was held," says Hasted, "of the Earl of Boulogne by a family who assumed their surname from it," and one of whom gave his name, Aluph, or Olaf, to the estate.

It is said in the *Testa de Nevil* to have been held by the sergeanty of being the Earl's *Veltrarius* †, i. e. of finding a man to lead his hounds. Aluph or Olaf de Boughton held it by this tenure in the reign of King John. Elias de Boughton inherited the estate, and was succeeded in the next reign by Peter, his eldest son, as heir at common law [a].

† Co. litt. 95 a.

Stephen de Boughton then inherited the estate, and dying in 14 Edw. I. left three daughters co-heiresses, between whom it was divided. Of these, Idonea was wife of Thomas de Gatesden, Joanna wife of Ralph de Otter-

[a] *Inq. post mortem*, 31 Hen. III. 11: "Petrus filius dicti Eliæ, primogenitus suus, ejus est proximus heres."

inden, and Isolda was unmarried. The inquisition recounts the assignment of dower to the widow, and the particulars of division among the co-heiresses [b] *.

* Cal. Gen. 369.

In the next year Ralph de Otterinden died, and a question arose whether the king or William de Leybourne should have the custody of his lands and the guardianship of the heir. The jury impanelled to decide this point found, that William de Leybourne was entitled to the custody of all the lands belonging to the said Ralph in his own right, because he held nothing of the king *in capite* except certain lands and tenements in Boughton Aluph, and the third part of the advowson, and these only in right of his wife, who was still alive. These latter were part of the honour of Boulogne, which had escheated to the Crown [c].

Had any of these lands and tenements been gavelkind, the guardianship could not have gone to the king or other chief lord, but must, according to the custom of Kent and the general law of socage lands, have gone to the nearest blood relation †, to whom the inheritance could not descend.

† Co. litt. 87 b.

The widow Joanna married again in 21 Edw. I., and died in the same year. A jury was thereupon summoned to decide the right of her husband George Laverton to be tenant by the curtesy of England. We may remember that by the custom of Kent the husband is entitled to retain for his life or until he marries again a moiety of his wife's lands, and this whether issue were born of the marriage or not ‡.

‡ Rob. Gav. ii. c. i.

But in this case the jurors decided, that the widower should have for his life the whole of the lands and tene-

[b] *Inq. post mort.*, 14 Edw. I. 17. [c] *Inq. post mort.*, 15 Edw. I. 29.

ments, expressly on the ground, *that issue was born during the marriage*[d].

[d] *Inq. post mortem*, 21 Edw. I. 123. As the inquisition by which this fact is known is curiously minute in its details, it may be worth while to translate so much of it as relates to the matter mentioned in the text. It is extracted in the Calendar Geneal. 469:—

"Inquisition taken on the death of Joanna de Otterinden, wife of George de Laverton, concerning the birth of issue of their marriage, by reason of which the lands of the said Joanna ought to remain in the ownership of the said George de Laverton for his life by the Curtesy of England.

"The jurors declare upon their oath that George de Laverton married the said Joanna on Wednesday, the vigil of the Circumcision, in the 21st year of King Edward I., from which time they dwelt together as man and wife until Monday on the vigil of St. Michael's day in the same year, within which time she conceived issue. And on the day of her death she bore a daughter at daybreak, after which she received the last offices of the Church, and thereupon died on the same day. Which daughter, Andrew, Rector of the church at Otteringden, in the chamber of the said Joanna in Otteringden, baptized at the day-break alive and crying ("baptisavit in aurorâ diei vivam et clamantem") by the name Joanna. Her godfather was John de Wynefield, and her godmothers Eleanor de Sindesham and Albreda de Stoneacre, who gave the name to the infant, naming her Joanna as aforesaid. She lived from the time of her birth before mentioned until sunrise of the same day, at which hour she died. Wherefore the jurors find that issue was born to the said George and Joanna, as aforesaid, of the female sex, alive, heard to cry, and baptized. And they say, that the lands and tenements held by them on the day of the said Joanna's death in Boughton Aluph were the inheritance of the said Joanna."

These jurors appear to have attached great importance to the fact that the child was heard to cry. Although the modern law does not require this evidence of life, it is remarkable that the opinion was so firmly held in ancient times, as we learn from Littleton. "Some have said that the husband shall not be tenant by the curtesy, unless the child which he hath by his wife is heard to cry, for by the cry it is proved that the child was born alive. Therefore *quære*." (§ 35.) Coke collects the opinions of Glanville, Bracton, Britton, and Fleta, and cites the *Stat. de tenentibus per legem Angliæ* in support of the same ancient opinion, but concludes "that the reason is against it; it is but evidence to prove the life of the infant."

No part, therefore, of the manor, advowson, lands, and tenements was of the nature of gavelkind.

On the death of Thomas de Gatesden, husband of the second co-heiress, we find it recorded that "he held nothing in his demesne as of fee of the king; but he held the fourth part of the manor of Boughton Aluph of the inheritance of his wife, who is still alive, and this was held of the king *in capite* as of the honour of Boulogne[e]."

The mother of these co-heiresses was endowed with a rent-charge out of the lands of Boughton Aluph[f].

She married Robert de Burghersh in the year last mentioned, and, according to Hasted, died seised of this manor in 34 Edw. I., being succeeded by his son, Stephen de Burghersh[*].

[*] Hast. vii. 387.

But this statement is very inaccurate, as the following summary of the inquisition taken on his death, 34 Edw. I. 41, will shew:—

"Robert Burghersh holds *two-thirds* of the manor of Boughton Aluph of the king *in capite*, which portion pertains to the (escheated) honour of Boulogne. It is held by the service of two-thirds of a knight's-fee and attendance from month to month at the king's Court in Witham."

An entry in the Book of Aid, 20 Edw. III., appears to prove that the demesne lands continued divided among the heirs and representatives of the three co-heiresses mentioned above:—

And he continues, "by the custom of gavelkind a man may be tenant by the curtesy without having any issue." (Co. litt. 30 a.)

The minuteness of detail in the document above quoted shews conclusively that there was no suspicion of a gavelkind tenure.

[e] *Inq. post mortem* 31 Edw. I. 20.

[f] *Inq. post mortem* 14 Edw. I. 17, and 31 Edw. I. 86.

"Thomas de Aldon[g] paid for one knight's-fee which Thomas de Gatesden, Joh. Paynell, and George de Laverton held in Bucton Olauf of the king as of the honour of Boulogne."

Of the subsequent devolution of the estate, Hasted's account is perhaps sufficient. Among other things he has noticed that in 12 Hen. VI. it was held at the common law by a tenant by the curtesy in the manner above described.

We have seen that besides these inquisitions *post mortem*, which contain a detailed history of the tenure and descents of each estate of importance in the county, there are interspersed in many other records notes of judgments and memoranda of tenure, which often enable us at the present time to determine, without further trouble, the question whether particular lands are in a customary tenure, or descendible at common law.

Thus in the published abridgment of the Pleas of the Crown it is recorded* that Boynton, in Swingfield, was a "free manor," which is further confirmed by the roll of lands held by castleguard of Dover Castle, and the inquisition on the death of Nicholas de Criol, 48 Hen. III. 39[h].

* Mic. 9 Joh. ii.

[g] "In Boughton Aluph was the ancient seat of the noble family of Aldon. William de Aldon was at the parliament of Clarendon among the peers and barons, and E. de Aldon was Marshall of the Horse to King Henry III."—(*MS. Book of the Tenures of Lands in Kent from the Records, by John Philipot, Blanchlion; Lansd. MSS.*, 276.)

On the fly-leaf of this MS. is a note, "This book is of great use for the county of Kent."

Cyriac Petit, in his "Notes on the Feodary of Kent," mentions that the manor was held by military service of the Crown by the family of Kempe, and quotes the inquisitions *post mortem* of T. Kempe, Bishop of London, 4 Hen. VII., and Thomas Kempe, 13 Henry VIII.

[h] By a suit arising out of the Parliamentary Survey of 1649, the common,

In the same place we find that "Charing manor" was also held at the common law*. This was not the paramount manor of Charing in the parish of the same name, for that was known as "proprium manerium Archiepiscopi," and was retained by the archbishops until the reign of Henry VIII. But there were several subordinate manors in the same parish, to one of which the notice probably refers. We know from other sources that several of these were descendible to the eldest son. Thus Stilley is enumerated among the "ancient knight-service lands" in the *Testa de Nevil*, and the tenant "is mentioned to have paid aid in the reign of Henry III. at the marriage of the king's sister, for lands which he then held in Charing†." On p. 261 of the same abridgment it is noticed that "Icking" was anciently held by military service, and was not gavelkind as early as the 8th year of John. In the same way the free tenure of Stowting is affirmed ‡, and other manors and lands, the freedom of which may be verified by reference to the Book of Aid, the Feodary of Kent, and similar authorities.

* Incert. Joh. r. 8.

† Hast. vii. 439.

‡ Omissa, Edw. I. r. 3.

The history of the manors of Burmarsh, with Abbots-Court and Beamston, in Westwell, is of importance to the present enquiry, not only as shewing the freedom of the particular demesne lands included in their boundaries, but also as establishing still more firmly the rule which has been illustrated in this chapter, and which applies to so many estates throughout the county.

The former of these estates was from very ancient times held by the abbots of St. Augustine's in francalmoigne, and formed a portion of the abbot's barony at the Conquest. According to Thorne ||, the chronicler of the abbey, it was

|| *Decem Script.* 1776.

or waste land, of this manor was found not to belong to the Crown, as supposed, but to be part of the barony of Folkstone. (Hast. viii. 122.)

given in francalmoigne in the middle of the ninth century by a layman, "as freely as his lord had before given it to him." This indicates that it had been held freely, or allodially, as "thane-land." In Domesday Book it is described as containing two "sulings" and three quarters (yokes). It was held by the abbey until the dissolution of monasteries, when the king "granted this manor, with Abbots-Court (the principal mansion, or court-lodge), to Walter Hendley, Esq.; and he seems very soon afterwards to have conveyed it back to the Crown, for I find a grant of this manor, with its appurtenances, to Sir William Finch, of the Moat (near Canterbury), and his heirs male by his wife Katherine, to hold *in capite* *."

* Hast. viii. 260.

He died leaving by her "two sons, who *successively* became possessed of it by virtue of the above grant." Had the manor and demesnes been gavelkind, the two sons would have divided the inheritance as heirs male by the custom. So much we learn from Hasted. But there is preserved in Chancery the record of subsequent proceedings not mentioned by him, which finally proved beyond a doubt that lands thus held by the abbey are not partible by the custom. Both the sons above mentioned having died without issue, they were succeeded by their half-brother, Sir Thomas Finch, the reversion having been secured to him by letters patent in 5 Elizabeth. On his death a dispute arose between his sons, which has not been reported, but the papers relating to which may be found by reference to the Calendar of proceedings in Chancery in the reign of Elizabeth. The bill contains the usual claim, that the land lying in Kent must be taken to be gavelkind, and Sir Moyle Finch, the eldest son and heir-at-law, shewed by his answer that from time immemorial the property in dispute had been held by the abbot

of St. Augustine's *in capite* by military service; the proof was carried back as far as the Conquest, so that the presumption of gavelkind was repelled, and the estate was retained by Sir Moyle Finch as heir at the common law[i].

In the same way he inherited the estate formerly known as the manor of Beamston, in Westwell, which at the Conquest had been held by a military tenant of Odo, Bishop of Bayeux. It is frequently mentioned in early records, including the Book of Aid, as being held by knight-service as part of the barony of Say.

The manor and demesnes having been separated from the services of the tenants, the manorial rights were destroyed[k]. But the demesne lands retained their freedom, though the manor was destroyed, and have always been descendible to the eldest son.

We may illustrate the value of this case of *Finch* v. *Finch*, by recalling what was said by Hasted of the manor and demesnes of Sturry:—

"The manor, with the rectory impropriate and several farms and lands belonging to it, continued in the descendants of Henry Roper Lord Teynham, in like manner as that of Ashford already described in this history, till it was with that manor sold under the direction of the Court of Chancery in 1765*." * Hast. ix. 79.

Now we have noticed in the preceding chapter on Tenures by Barony and Castleguard, that Hasted was wrong in supposing the manors of Ashford and Sturry to have been divided between coheirs in gavelkind: and that the private Act of 29 George II., mentioned by him, related to gavelkind tenements as well as to these manors,

[i] See the inquisition taken on his death in 1614, preserved at the Office of the Public Records.

[k] *Sir Moyle Finch's Case*, Co. Entries.

so that part of the property in dispute descended to the elder brother alone, and the rest to the two brothers as co-heirs by the custom of Kent. This explanation will be confirmed by comparing the history of the manor of Sturry with that of Burmarsh, proved by the case of *Finch* v. *Finch* not to have been gavelkind. Both were given long before the Conquest to the abbey of St. Augustine in francalmoigne, and both are described in Domesday Book as parts of the abbot's barony, in which they continued without interruption until the reign of Henry VIII. They could not, therefore, have been of such different tenure, as that one should be descendible to the eldest son, and the other in gavelkind. Thus the freedom of Burmarsh implies the same free tenure in all the estates held by the abbot by barony at the date of the Domesday Survey: for instance, as to the two manors of Repton in the same parish of Ashford, which were always held of the abbot by knight-service, as appears by the *Testa de Nevil* and the other rolls of military estates in Kent. Again, the manor of Snave or Snavelees[1] was originally part of the same barony, and held of the Abbot on the same terms. The Book of Aid 20 Edw. III. contains a note, that lands called Bakers and Barnards, *alias* Snavelees, were held by ancient knight-service by the family of Orlestone. In 35 Henry VIII. this estate was divided between a tenant named Pickering, and Sir T. Wyatt.

In the same way we can shew the freedom of those other manors and demesnes[m], once held by the abbot or

[1] "I find," says Hasted, "that as high as King Richard the First's reign John de Snave held land here by knight-service of the Abbot of S. Augustine's. W. de Sokenesse held it in like manner of the abbot and convent about the reign of King Edward III."—(*Hast.* viii. 395.)

[m] The abbot's manor of Stodmarsh affords an example of what has been

his military tenants, which now are in lay hands, as well as of those which are held in francalmoigne by virtue of the grants of Henry VIII. to his new cathedrals or otherwise.

Among the former are the two manors of Garwinton, Elmstone, East Langdon, and very large estates in the parish of Northborne. To these may be added Ripple Court and the manors of Hull and Swaycliffe, which are stated by Thorne to have been held from very ancient times by the abbey; and Minster in Thanet, the history of which has been noticed in the earlier chapter on Kentish measures of land.

The same point can of course be demonstrated in each instance without reference to the proceedings in *Finch* v. *Finch;* the proof, however, is rendered easier by the fact that all these estates were held by the same owners and under precisely the same circumstances for so many centuries.

There are several more memoranda in Petit's Feodary, which are worthy of notice. As for example, that the estate called Owlie in Wittersham, comprising 200 acres of arable and some woodland, was held as half a knight's-fee at the date of the Book of Aid by the family of Passelewe, and by Reginald Peckham in 35 Henry VIII. in the same tenure.

There is also an entry respecting the estate known as Brising in the parish of Langley to this effect:—

"Thomas Culpeper paid the military aid due in 20 Edw. III. for half a knight's-fee held by Sarah de Bresing in Bresing and

said respecting the value of ancient exemptions from tithes; the demesne lands, which were held in barony, are distinguished from the gavelkind (*terra villanorum*) by their freedom from all charges from great tithes by reason of an ancient commutation. (Hast. ix. 146.)

Langley, of William de Leybourne: this was held in 35 Henry VIII. by the widow of John Astry, who died in that year. It comprised two acres of land and ten shillings rent of assize from freehold tenants in Brising, held of the king as parcel of his manor of Langley, (which was within the fee of the Duchy of Lancaster). This appeared from the inquisition taken on the death of John Astry, 35 Hen. VIII., and it was likewise proved to the Commissioners at the time of taking the inquisition, that these lands in Brising were held by knight-service. In proof of which an indenture of lease of the same lands of the date of 5 Edw. IV., was produced in the Court of Wards and Liveries by the uncle of the said John Astry."

As an instance of the way in which the estates held by ancient knight-service became subdivided among the descendants of co-heiresses, we may take Petit's entry respecting a small estate in East Sutton or Sutton Court. The principal manor with the demesnes were "held by Hugh Soldanks by knight-service in the reign of Henry III.; his descendant, Stephen Soldank, held it in the reign of Edward I., according to the Book of Knight's-fees in the Exchequer *."

* Hast. ix. 559.

Soon afterwards the manor and most of the lands in it appear to have been acquired by the Abbey of St. Augustine; but some of the demesnes remained in lay hands.

William de Northborne was owner of 56 acres of this ancient knight-service land, and paid the military aid for it in 20 Edw. III. as for one-fifth part of a knight's-fee.

In the reign of Henry VIII. the same service was due from the estate, which was then held by four different owners, in the following proportion: 40 acres belonged to John Holday, 12 acres to T. Paynter of Dover, and 3 acres a-piece to Philip Verrier and T. Fynes.

In Hasted's notes upon this record are also found memo-

randa of the ancient military tenure of Stansted, which is not separately described in Domesday Book, and which therefore might have been presumed to be gavelkind, were it not entered in the Book of Aid, and of Woodfold manor in Yalding: of the latter it is said in the Book of Aid, "*Nota*, no rent is paid by the tenant of this land, and it is held by military service."

Another curious note refers to the manor of Bere or Byer Court in West Cliffe: "And it is to be remembered that John Tuck, tenant of the manor of Bere, has always paid for it to the Sheriff of Kent a certain yearly rent called Blanch-rent, *and likewise pays towards the wages of the knights of the shire, and thus it appears plainly that he holds by knight-service.*" In the reign of Henry VIII. the manor was held by the same family of Tuck or Tooke, as (together with West Cliffe) one knight's-fee *in capite*.

Again, the manor of Godwinston mentioned in the Book of Aid, is further proved to have been held by ancient knight-service by a reference to the Roll of lands, for which the tenants paid the feudal aid towards the marriage of Blanche, eldest daughter of Henry IV. Petit has further noted a division of the demesne lands between the daughters of R. Graveney in the reign of Henry VIII., and the sub-division of a third part between the heirs of one daughter, named Kempe, Judd, and Maxton[n].

[n] This "Godwinston" is probably Goodneston in the Hundred of Wingham. See Kent. Arch. Soc. v. 275. It must not be confounded with the Godwinston or Goldwinston near Sittingbourne, which was ancient demesne and gavelkind. See *Originalia* in the Exchequer, 3 Edw. III. r. 11: "Whereas it is shewn, that Juliana de Leybourne, deceased, held the manor of Goldwinston with its appurtenances in gavelkind of Isabella, Queen of England, and that Henry and Juliana her children are her heirs, &c." See also *Inq. post mortem* William de Leybourne 3 Edw. II. 56, and Juliana de Leybourne 41 Edw. III., Kent. Arch. Soc. i. p. 1, and v. p. 193.

This roll of Blanch-lands, long preserved in the Exchequer as evidence of Kentish tenures, and now among the State papers, is a very useful document for the purposes of the present enquiry. Hasted made some use of its contents in his history, and among his MSS. are extracts from it, among other "transcripts and various notes from the rolls in the Exchequer relating to Kent."

A few sentences will shew the value of these notes. Besides Godwinston we find fifteen other estates of importance which paid this aid, which was not levied on the military lands throughout the whole country as in the case of the aid of 20 Edw. III.

One of these was Lowden in Rolvenden, which (as Hasted has shewn with sufficient clearness) was held by ancient knight-service. He proceeded indeed with less precision to write of a partition obtained by the gavelkind co-heirs of its tenant at the end of the seventeenth century. It must be observed, that this "ancient knight-service manor" descended (and was not "allotted") to the eldest son, and the customary lands in Rolvenden, Benenden, and Sandhurst, were alone affected by the writ of partition[o].

Several estates within the liberty of the Duchy of Lancaster, the court for which has been held at Farnborough since the reign of Henry III., are inserted in the Roll of Blanch-lands.

Such are the "ancient knight-service" manors and demesne lands of Chelsfield and Goddington, of Norsted and Goddington *alias* Wattons in Frindsbury, for which the family of Goddington paid aid in 20 Edw. III. Besides

[o] Hast. vii. 193. He cites the *Testa de Nevil* and the Book of Aid, as well as the Roll of Blanch-lands of 4 Hen. IV., and the reference to the writ of partition among the heirs of Kadwell. (Cl. 565, Trin. 1, Jac. II.)

these we find in the same list Farnborough and Kemsing, the ancient inheritance of the Grandison family, and among others the manors of Hastingleigh, Aldelose, Monk's Horton and Horton Kirkby, Brabourne and the Pound Farm, Shelford, and Sutton Hastings [p].

Sellindge, a castleguard manor belonging to the Lord Warden's barony, is placed in the Feodary of Kent among the "ancient knight-service lands."

The correctness of this is shewn by the proceedings before the Justices Itinerant at Canterbury in 21 Edw. I.*, and the inquisition *post mortem* of Peter Fitz-Reginald in 16 Edw. II., as well as by later entries in the Escheat Rolls, as for example, "Julia Inglethorpe holds one-third of the manor of Sellinge of the king *in capite* by military service, 10 Hen. VII."

* Hast. viii. 305.

Concerning Darbies Court in Stalisfield we find this note:—

"Sara de Darby paid aid in 20 Edw. III. for a quarter of one knight's-fee, which William de Darby and the heirs of T. Franklyn held there by knight-service in (the hamlet of) Wingfield. Now (35 Hen. VIII.) it is held by Anthony Sands by knight-service as appears by the evidence of John Jeffrey there dwelling."

And with reference to the estate disputed in *Lowe* v.

[p] The ancient tenure of all these estates can be verified by the usual reference to Domesday Book, the *Testa de Nevil*, &c.; but in reality the entry on this roll of Blanch-lands is sufficient to shew that they descend at common law. No gavelkind land paid these aids, and one entry of payment is as good as several.

Hasted gives a reference to another of these aids in writing of the castleguard manor of Frensham in Rolvenden, viz.: "In the 20th year of Henry III. it was in the possession of a family of the same name, as appears by the *Testa de Nevil.* John de Fresingham held it then, and paid aid for it, as holding it by knight-service, at the marriage of Isabel, that Prince's sister."—(*Hast.* vii. 194.)

Paramour[q], and wrongly supposed by Hasted and Robinson to have been gavelkind, he writes:—

"*Harty manor,* Champion's Court (in Newnham), and Norton (in Faversham Hundred), are all of the same tenure, and owe castleguard rent to Rochester Castle, as is shewn by the inquisition *post mortem* of William Capell in 7 Hen. VIII."

The inquisition *post mortem* of Anne, heiress of Thomas Cobham, taken in 20 Henry VIII. shews, that the manor of Allington Cobham was held of the king by knight-service in chief; that the manor and lands in Orkesden were held of Lord Zouch by the same tenure, and those of Vielston of the Archbishop of Canterbury by the same military service[r].

In a volume of memoranda by Hasted, which is preserved in the British Museum, is an important note concerning lands in Tirlingham, Newington, and neighbouring parishes.

[q] Besides the evidences given earlier in discussing that suit, on which Robinson grounded a doubt whether trial by battle was not allowed in actions for gavelkind land, we may refer to the Escheat Rolls for the *Inq. post mortem* of Roger Cheyney 15 Hen. VII., R. Cheyney 4 Hen. VIII., and of Sir T. Cheyney, 1 Eliz.

The Long House Farm was part of Harty manor, and therefore of the same tenure as the moat, claimed in that suit. This farm was held by John de Criol by knight-service in the reign of Edward I. (see *Inq. post mortem* Bertram de Criol, 23 Edw. I. 48), and is therefore entered in the Book of Aid 20 Edw. III., when it was in the ownership of Mary, widow of John de Campaniâ: it then consisted of a messuage and 400 acres of marsh land, as appears by Petit's notes, to which Hasted refers, (vol. vi. 279). In the reign of Henry III. the whole manor of Harty was held by knight-service by Robert Champion or De Campaniâ. (*Testa de Nevil.*)

[r] Orkesden is now called Aston Lodge. It was anciently held of the Archbishop of Canterbury as part of his barony. See the *Testa de Nevil,* and the list of the military lands held of the Archbishop in the Red Book of the Exchequer, 132.

By the inquisition taken on the death of Henry Herdson 2 and 3 Philip and Mary, 5 Eliz. and 20 Eliz. pt. 5, it was found that he held the manors, with lands contained in them, of Newington Belhouse and Bertram, Newington Fee or Dimchurch, Tirlingham, Wolverton, Ackhanger, Swetton, and Wolton, being parts of the barony of Folkstone and held by tenure of castleguard, with the manor, castle, and park, and site of the priory, in Folkstone. All these were held of the Crown, by knight-service, from the most ancient times. The jury found, that of these lands and tenements Thomas Herdson his eldest son was *heir*, although it appears by the will of H. Herdson that he divided his lands among all his sons, giving portions of land to the two younger, which else according to the finding of the jury, would have descended to the eldest as heir-at-law.

In the same volume Tottington and Eccles, manors which we have before noticed to have been held by castleguard of Rochester Castle, are proved to be held *in capite* by reference to the Escheat Rolls[s]. We have shewn earlier that they were never held in gavelkind.

The same proofs are produced for the manor of Burdeville[t], and for Ringley Wood in Great Buckland[u].

An estate containing 100 acres, and belonging to Leybourne Rectory, and situated mostly in Wrotham parish,

[s] *Inq. post mortem* of Thomas Palmer, 23 Hen. VII.; of Edw. Poynings, 14 Hen. VIII. Eccles is further noticed to have belonged to the Duchy of Lancaster.

[t] *Inq. post mortem* of T. Cobham, 20 Hen. VII., and of his daughter and heiress Anne Burgh in 20 Hen. VIII.

[u] Th. Frognall, *inq. post mortem* 20 Hen. VII.; Edw. Norwood, *inq. post mortem* 2 Hen. VIII.; T. Godding, *inq. post mortem* 25 Hen. VIII. And for the freedom of the whole manor, *inq. post mortem* of Henry Lee, 30 Hen. VIII.

is shewn by the Book of Aid and the notes upon it in the Feodary of Kent, to have been held by ancient knight-service as one-thirtieth part of a knight's-fee (the aid paid being 16d. at the rate of 40s. per knight's-fee).

There are also several notices of lands which had been disgavelled in early reigns, and converted into 'frank-fee,' but the consideration of these must be postponed to a later chapter.

Enough has been quoted to shew that there need be at the present day very little doubt as to the tenure of lands belonging to any of the principal manors throughout the county. The notes of Cyriac Petit identify the estates mentioned in the earlier Book of Aid down to the end of the reign of Henry VIII., after which time it is comparatively easy to trace with particularity the descent and history of the lands. The later inquisitions *post mortem* are also of great service in this respect, as they contain the history of all the landed estates in the county down to the abolition of the feudal system, at which time the confusion respecting tenures seems to have existed, which has made many heirs-at-law divide lands as gavelkind upon an intestacy, to avoid the trouble and expense of searching among unpublished records for proofs to rebut the common presumption of customary tenure.

CHAPTER XV.

Tenure in Socage.

Authority of the Book of Aid.—Tenures *in capite*.—The Baronies of Boulogne and Peverel.—Custom respecting Knights of the shire in Kent. Conversions of military tenure into socage *in capite*.—Rents in kind.—*SOTEMERE, CAPELL, BURHAM, WOODS COURT, BUCKLAND*.—Rent service of a rose.—Manors held *in capite* by the Abbey of St. Mary Grace.—Estates of St. Stephen's Chapel, Westminster.—*MAPLESCOMBE, HOCKENDEN, MINSTER* in Thanet, *SWANSCOMBE*.—Estates of the Cobham family.—*OXENHOATH, PRESTON, ROTING*.—Case concerning lands in *PLUMSTED*.—Manor of *HALTON*.

NOTWITHSTANDING the narrow interpretation put by some writers on the clause respecting gavelkind tenants in the act of 18 Henry VI., we have seen that a very large amount of land was at that very time held by knight-service in Kent. The same proof might easily be arranged for every reign down to the end of the feudal period, chiefly by means of the inquisitions *post mortem*, which did not cease to be of value in proving tenure until late in the reign of Charles I. Some of the later inquisitions will be cited in the Appendix among Cyriac Petit's notes on some of the entries in the Feodary of Kent.

But the Book of Aid of 20 Edw. III. must after all continue to be the paramount authority for determining which lands were held "by ancient knight-service." This book, as we have seen, was illustrated in each reign by the notes and memoranda of the officers of the Exchequer, so that the various estates therein mentioned are identified and assigned to their later owners. The copy used to

a great extent in forming the Appendix to this treatise, was noted down to the end of 1612.

We may here conveniently recapitulate some of the reasons for the value thus assigned to this record. The list of lands was taken from those earlier returns, preserved in the Black Book of the Exchequer and the *Testa de Nevil* or Book of Knight's-fees, which were furnished by the immediate tenants of the Crown, when any of the three great feudal aids were required by the king. The returns were compared with surveys taken by the royal officers, and when found to be correct were preserved "in the hutches in the Exchequer," as evidence of tenure for future occasions.

These aids for the king's ransom, for marrying his elder daughter, and knighting his eldest son, were paid only by those persons who held immediately of the Crown, i.e. who were in the formal sense of the phrase 'tenants *in capite*.' The most that could be levied was a sum of 40s. for each knight's fee or portion of socage, worth yearly £20, and held *in capite*.

Thus we learn from Madox that "in the elder times aid was paid by those who held lands of the king by barony, or by knight-service, or by sergeanty, together with knight-service, or by socage *in capite**."

* Madox, Exch. i. 572; Nims, Geneal. 39.

Being levied exclusively on tenants *in capite*, they could not be taken from gavelkind lands†, none of which were so held, unless we may speak of the tenements in the four manors of ancient demesne in Kent as "gavelkind *in capite*;" but these last lands are not mentioned either in the Book of Aid, or in the earlier and later records of the same description.

† 3 Real Prop. Report.

The aids *pour fille marier* and *pour faire fils chevalier* were not due from any lands held anciently in francal-

moigne, or from the socage tenements held of the military tenants of the Crown[a].

The only lands not anciently held by knight-service, which are named in these rolls of knight's-fees, are those which had been disgavelled by charter or license of the king before their compilation, as will appear in the next chapter.

The Rolls of Parliament furnish us with an example in the reign of Henry VI., of the use which was made of the Book of Aid in determining tenures of land in Kent*. * Rot. Parl. iv. 369.

In the ninth year of that reign the Commons granted an aid or subsidy to the king; this was not actually collected†, but the proceedings relating to the grant will illustrate our point. † Ibid. 409 a.

It was resolved that the aid should be charged on all military lands held *in capite* at the rate of 20s. for each

[a] "The abbot of Durford discharged of paying aid, provided it be clear that he holds in francalmoigne, and that he pay for all held by knight-service."—(*Rot. Parl.* ii. 222, b.)

Madox, Exch. i. 529, and cases there cited: *Sunninghall's Case, Brev. Mic.* 2 Edw. II. 31; *Cockfield's Case, Brev. Mic.* 9 Edw. II. 7. See Co. litt. 93, b, note 3.

It should be mentioned that lands forming part of certain baronies, while in the king's hands, were considered to be held *ut de Coronâ*, and not merely *ut de honore*. Such were the baronies of Boulogne, Peverel, and Haghnet; "as to the ancient honour of Peverel, *nota*, the tenure is *in capite*, but some new additions to the honour were not so, e.g. the manor of Woodham Mortimer. It was found in *Church's Case*, that tenure of the honour of Peverel was *in capite*."—(*Co. litt.* 77 a, n. 1.) See the *inq. post mortem* of Hamo de Gatton, 20 Edw. I. 25, who "held the manor of Trewleigh in Kent of the king in chief as of his honour of Peverel by knight-service;" and the *inq. post mortem* of Alice and Richard Charles in 1 Ric. II. and 9 Ric. II. 135, who "held Great Delce in Kent of the king in chief as of his honour of Peverel and Haghnet by knight-service." —(*Hast.* iv. 170, 545, viii. 489.) In the same way Boughton Aluph, Wilmington, and other manors, were held of the Crown as parcel of the honour of Boulogne.

knight's-fee, provided that persons holding such lands in Kent, who were chargeable for the wages of the knights of the shire[b], should pay 10s. for the same estate. The Book of Aid of 20 Edw. III. was expressly taken as the canon for determining which were the military lands held *in capite*, and it was further provided that no ecclesiastics should contribute for lands, which were given in mortmain before the compilation of this Book of Aid.

The ancient rule observed in the compilation of this book, was as follows: — "The aid shall be paid now (20 Edw. III.) as by ancient law or custom was used, from every knight's-fee and every estate worth yearly £20 of socage held immediately of the Crown."

Much knight-service land was in different reigns turned

[b] An instance was given in the preceding chapter of land pronounced to be "ancient knight-service," and not gavelkind, because the tenant contributed to the wages of the knights of the shire. There are several notices of this usage in Kent upon the Rolls of Parliament, which have not been in general noticed in the histories of the county.

Thus in 2 Ric. II. the Commons presented a petition, that the usage of Kent should be made to conform to that of the rest of England, notwithstanding that the said wages had before always been levied on the military lands ("fees de Chivalers de dict Counte de Kent") and no others. But the king ordered the ancient usage to be observed. (Rot. Parl. iii. 53 a.)

And in 2 Hen. V. a petition was presented to the king praying that *all military tenants* in Kent (excepting the tenants of ecclesiastics and temporal peers) should contribute to these wages, and that none should be excused, and calling attention to the immemorial usage of the county, that none but tenants by knight-service should contribute. "Comme les gages de Chivalers qui veignent al Parliament pur le Counte de Kent ne sount pas levables de autres gens, soloncque la custume illoecqs de tout temps dont memorie ne court use, sinoun de ceux qui teignent lour terres dans Kent par le services de Chivalers," &c. This petition was granted. The note previously quoted from Cyriac Petit shews that the custom remained in force during succeeding reigns, and it might in some cases be very useful to shew that particular lands contributed to these payments, as an evidence of tenure.

to socage, as indeed has already appeared in discussing the tenure by petty sergeanty, which was but a dignified species of socage. There is no need here to make more than a simple reference to the judgment in *Gouge* v. *Woodin* and *Dionysia Noel's Case*, to shew that such a conversion of military land to "frank-fee" did not create a tenure in gavelkind.

The number of estates held by knight-service was in fact continually diminishing from the first creations of petty sergeanties to the date of the dissolution of monasteries, when as will be seen later, the number of military estates was again increased. It is proposed in this chapter to consider briefly the tenure of those estates which thus came to be socage in early times, remaining nevertheless descendible at common law.

The change of tenure took place in various ways.

1. By the creation of petty sergeanties and tenures analogous to them, being varieties of socage *in capite*.

2. By direct grants of the land with reservations of a definite rent in lieu of all services [c].

3. Some of the castleguard manors were held in socage, although those held of Dover Castle appear to have retained their military incidents.

4. The tenants *in capite* commuted the military services of their sub-tenants for a rent certain, or personal services analogous to the king's petty sergeanties.

5. Lastly, the tenure of francalmoigne was changed to socage, whenever the lord aliened the seigniory, or the tenant aliened to a layman [*].

The tenure of socage *in capite* was changed by the

[*] Co. litt. 98 a, 99 b.

[c] "Quant le Roy dit 'pro omnibus servitiis et demandis,' donques il expresse son intention que seroit Socage."—(*Stephen* v. *Holmes*, *Litt.* 47, 33 *Hen. VI.* 7, 7 *Co.* 123, *Lowe's Case.*)

statute 12 Car. 2, c. 24, into free and common socage, and its distinctive burdens were then abolished. Its only importance, therefore, at the present day, so far as this enquiry is concerned, lies in the fact that full proof of a tenure in socage *in capite*, properly so called, is an answer to any presumption that the land was ever gavelkind.

We have before shewed that "gavelkind *in capite*" could only exist in the four manors of ancient demesne in this county.

Besides the petty sergeanties above enumerated, we find many instances of lands (at first military) held of the king by a "free service *," not pertaining to war, and only to be distinguished from common socage by the fact that the king was the *immediate* lord of the fee.

* Co. litt. 108 b.

Such were the tenancies where the service of a ship [d] for the king's passage to Gascony was due, or where the tenant was bound to provide a leader of hounds [e], a keeper of

[d] The tenant of Bekesborne, *alias* Levingsburn, was bound "to find a ship called a Baard," for this purpose. (Blount's Tenures, 288; Hundred Roll, 3 Edw. I., Kent.) It has been placed under the head of estates held by sergeanties in a former chapter, because by other records it appears that a ship was due from this manor, as well as that of the Grange, in Gillingham, as belonging to the port of Hastings, and within the liberty of the Cinque Ports. They are therefore included among the lands held by sergeanty in the list at the end of the *Testa de Nevil* (Kent).

A very ancient record, compiled by Michael Berisford, Feodary of Kent (a copy of which is found among Lambarde's *Collectanea Historica*), contains this account of the two manors: "Ils trouveront ces (2) neifs sur la somonce de 40 jours, armées et en chescun neif 20 hommes, et le maistres des mariners, et ils (the tenants) maintiendront a leur costes demesnes" (at their own expense).—(*Cotton. MSS. Vesp.* A. 5, 67.)

For the tenure of the Grange estate in later times by the service of a ship, see *Inq. post mortem* Edward Bam, 20 Hen. VII.

[e] See an inquisition on the death of John Engaine, 31 Edw. I., Calend. Geneal., 777:—"He held a mansion and fourteen virgates of land by the sergeanty of finding keep for the king's harriers and brach-

falcons, and the like, or was required to pay rent to the king either in money, or necessaries for the chace and the household[f]. Thus in the reign of Henry III. the estate called Sotmere, in the parish of Capell, was held by the great family of Criol by the service of finding "nine leash of greyhounds" for the king.

The manor of Burham[g] was at one time held in socage *in capite*, the tenant being bound to provide a ship whenever required by the king; and the early records would

hounds for the chace and capture of hares, foxes, wolves, wild-cats, &c., in the forests of four counties."

[f] "There was but little money *in specie* in the realm in those early times (before the reign of Henry I.) Rents due to the king were wont to be rendered in necessaries for his household. Afterwards the revenue of the Crown was paid chiefly in gold and silver, but sometimes in horses, hounds, birds for the chace, and other things."—(*Madox, Exch.*, i. 272; *Dial. de Scacc.*, i. c. 7.) Thus Stephen de Heringod, a Kentish landowner several times mentioned above, is said to have paid the king 37s. and one foxhound ("canem wulpecularem").—*Memor.* 32 Hen. III., r. 15.)

And (according to Madox) R. Engaine accounted for 100 marks in money "et quatuor gupillerettis," which seem also to be foxhounds. (Mag. Rot., 15 Joh. 8.)

For a curious tenure of the manor of Henwick, in Northamptonshire, held by the Lovett family of the Engaines by service of chasing the wolf, ("fugacionem lupi quam I. Lovett pro terrâ mihi debebat,") see the deeds cited in Collect. Topogr., vi. 300.

The monks of Christchurch paid to the Crown one pair of gloves yearly for their estate in the forest of Bleane before described. (*Lib. Eccles. Christi*, Cotton. MSS. Vesp. A. 5.)

[g] Burham. (Harl. MSS., 313, 11; Blount, Tenures, 292; Co. litt. 108 a.) Hasted does not mention the tenure, but says enough to shew that the land was held at common law. It was part of the barony of Odo of Bayeux, by whose military tenant one-fourth of the land was held in demesne. William de Saye was found by inquisition, 23 Edw. I. 49, to hold the manors and demesne lands of *Burham*, Cowdham, and West Greenwich of the king by barony, the first by service of repairing Rochester bridge and a house in Dover Castle. His son, "Geoffrey de Saye, died in 33 Edw. I., holding Burham *in capite*" by the same service. (Hast. iv. 411.)

furnish many similar instances, from which we need not select more than the following. A tenant, named Colsted, is shewn by inquisition taken on his death in 18 Edw. I., to have held the manor of the same name in socage of the king, *scilicet*, by providing yearly one sparrow-hawk, or, in lieu thereof, two shillings at the Exchequer. The tenant of Goddisland, otherwise called Woods-Court, one of the manors held of Chilham Castle, owed the same service, which being certain could not be higher than socage *.

* Rot. Parl. i. 330 b.

In the same way the manor of Buckland, near Dover [h], was held of the Crown at the rent of a red rose in lieu of all services †, by virtue of a grant made in 48 Edw. III., which changed the tenure from knight-service to socage *in capite* [i]. The same change was made in 10 Edw. II. as to one moiety of the manor and lands of Queen-Court, in Ospringe; and as late as 3 Hen. VII. we find by the Escheat Rolls that the rent due from the tenant was a rose yearly, if demanded. The other moiety was held continuously by knight-service from the Conquest downwards, to the reign of Charles II. The free tenure of the last-named moiety is a proof, if such were needed, of the same freedom in the portion converted into socage *in capite*: "for one part of a manor shall not be of another nature than the rest ‡."

† Co. litt. 86 a, 92 a; Hast. ix. 465.

‡ Co. litt. 78 b.

[h] Buckland. This must not be confounded with the manor of the same name near Faversham, alleged by Hasted to have been portioned as if of gavelkind nature, (vi. 399,) nor with Great Buckland, in Maidstone, which was in reality gavelkind at first, though disgavelled as early as the reign of King John. (See case of *De Beclaunde* v. *De Beclaunde*, *Itin. Kanc.*, 55 Hen. III. 61, extracted by Robinson, bk. i. c. 5.) Great Buckland, in Luddesdon, is shewn by all the ancient rolls of knight's-fees to have been held at common law. (Hast. iii. 372.)

[i] *Wheeler's Case*, 6 Co. 6.

The reservation of "a rose in lieu of all services" was very common in Kent.

The abbey of St. Mary Grace, in London, was endowed, in 50 Edw. III., with the manors of Gravesend, Lynches in Northfleet, Parrock, Bicknor, Leybourne, Wateringbury, and Gore in Upchurch, the ferry or passage at Gravesend, and other hereditaments, to hold of the king by fealty and the rent-service of a rose ("rendant par an une Rouge Rose*.") * Rot. Parl. i. 179.

This gift was confirmed to the abbey in francalmoigne, with no reservation of rent, in 12 and 13 Ric. II. † † Hast. vi. 27.

The dean and canons of St. Stephen's Chapel, in Westminster, were also the owners of a large estate in Kent held of the king by socage *in capite*. In 7 Ric. II. they held by the service of paying a red rose yearly the manors of Ashford, Wall and Esture in Ashford, Barton and Buckwell in Boughton Aluph, Easling, Mere, Langley in Leeds, Eleham, Colebridge, and lands in Eynsford, as well as in the foregoing manors. Their estate was confirmed by Richard II. in his 22nd year[k] ‡. ‡ Rot. Parl. i. 178 b.

The maxim, that one part of a manor cannot be of a different tenure from the rest, may be illustrated by what we know of Mapscombe, or Maplescombe, in the parish of Kingsdown. One moiety was always held by knight-service and castleguard of Dover Castle ||, in which tenure it continued at least as late as the reign of Ed- || Red Book of Exch. 157 d.

[k] These lands, &c., were part of the escheated estates of the Infanta of Kent, Juliana de Leybourne. There are many other examples in old Kentish collections of deeds of this tenure by service of a rose, e.g. Henry de Malmains, of Waldershare, granted lands in Pluckley on these terms, 28th Feb. 9 Ric. 2; and Isabel Wasard granted a house and seven acres of arable in Bredhurst for the like rent in 10 Edw. III. (Brit. Mus., Add. MSS. 931, 949. See for other notices of the same kind, Rot. Parl. i. 100 b, 451 a.)

ward VI.[1] The other moiety, therefore, was held at common law, though it was in the reign of Edward I. changed to a socage tenure:—

"William de Valoignes held of the king a moiety of the manor of Maplescaump, by the service that if the king should come thither to hear mass, he should provide the king with a penny for an oblation[m]."

In the Escheat Rolls of 3 Edw. II. an entry records that Isabella Mohaunt, or de Monte Alto, "held *in capite* 13 acres of arable land at Hockenden (in St. Mary Cray) by service of paying yearly at the Exchequer thirteen pence with her own hands[n]." We may compare with this another entry under the same year, relating to Stephen de Burghersh, who then "held *in capite ut de coronâ* by rent-service the manor of Stowting, with 100 acres of arable in demesne, besides pasture, woods, &c., and the rents of the freeholders."

In later reigns, especially after the dissolution of the monasteries, when a certain confusion of the ancient tenures is observable, it became usual for the king in grants of land anciently held by knight-service to create

[1] See, *inter alia*, the *Inq. post mortem* of John Lovelace in 2 Edw. VI.: "Tenet dimidium manerii de Goodneston de Rege in capite per servitium militare, et manerium de Maplescombe et 500 acras terræ, &c., in Maplescombe Farningham et Eynsford de Rege ut de Castro de Dovor per servitium militare. T. Lovelace est ejus filius et hæres."

[m] Blount, Ten. 211; Harris, Kent. 219; Hast. ii. 485; Thorpe, Cust. Roff.; Rot. Hundr. Kanciæ.

[n] This Isabella Mohaunt held *other* lands in Hockenden of the Prior of Christchurch, which were gavelkind, viz. a messuage and 42 acres of arable by service of tilling certain fields and carrying the crop to the Prior's grange at Orpinton, and making suit at his three weeks' court in Orpinton. A deed reciting her tenure is fully extracted in the Appendix to Somner's Gavelkind, No. x.

a new socage tenure in this form: "To hold of the king as of his manor of East Greenwich by fealty only *, in free and common socage and not *in capite* or by knight-service, rendering yearly the rent following, &c." In some cases, where knight-service land and gavelkind were dealt with by the same instrument, the latter only were given in socage, that confusion of tenures might be avoided. Thus in a grant made by Henry VIII. to Henry Cheyney of more than 5000 acres of land at once in Eastchurch, Minster, and neighbouring parishes, we find the following clause: "Of which lands and tenements 100 acres of arable, 100 acres of pasture, and 100 acres of marsh land, (naming them) are to be held *in capite* by military service, and all the rest to be held of the king in socage °."

* Litt. 118.

The manor of Gore in Upchurch (which was disgavelled while in the tenure of Roger de Leybourne) was held by knight-service, before it came to the abbey of St. Mary Grace, as one-fourth of a knight's-fee. The latter king

° See, among others, the grants of the manors of Charing and Dartford, and the castle lands in Canterbury, &c., as cited by Hasted. For the effect of such grants on the tenure of the land see *Gouge* v. *Woodin*, *supra*, and Lambarde, Peramb. 534: "If lands originally holden by military service come into the hands of the king, and are afterwards granted out in socage, this will not reduce them to the nature of gavelkind."

The manor of Minster in Thanet affords us another example of a grant in socage of what had formerly been held by knight-service. According to Hasted, the manor, court-lodge, demesnes, and appurtenances, late parcel of St. Augustine's Abbey, excepting the advowsons and rights of Church patronage, were granted in 9 Jac. I. to Cary, Pitt, and Williams, "to hold the *manor* with its rights, members, and appurtenances of the king as of his manor of East Greenwich by fealty only, in free and common socage, and not *in capite* or by knight-service; and to hold the rents of assize paid by the freeholders (the 'penny-gavel' and 'corn-gavel' rents) of the king *in capite* by the service of one knight's-fee."—(*Hast.* x. 276.)

granted it to Sir C. Hales in socage in his thirty-fifth year, in which tenure it continued, as we learn from a license given to R. Stoneley in 22 Elizabeth, "to alienate the manor and lands of De la Gare, which are held in socage *in capite*[p]."

We may take as an example of the castleguard manors, the tenure of which was changed to socage in ancient times, the manor of Swanscombe, before mentioned in the chapter on castleguard. The inquisitions taken on the deaths of Edmund Earl of Kent, and of Richard Talbot, in 4 Edw. III. and 31 Edw. III. respectively *, shew that this manor with its demesnes and appurtenances was held *in capite* as of Rochester Castle by payment of rent in lieu of all services, i.e. in socage. Its tenant paid aid for it in 20 Edw. III. as having been originally held by knight-service.

* Hast. iii. 409.

Again we find by the Patent Rolls of 3 Elizabeth, that "a moiety of the manor of Patrixborne with 40 acres of land was granted to Sir Henry Cheyney and his heirs, to hold *in capite* as of Rochester Castle, i.e. in socage, in which tenure also was the manor of Bilsington, then belonging to the same owner. The other moiety of Patrixborne, with 20 acres of arable and 20 acres of pasture was held by him of the Crown by knight-service[q].

[p] See the inquisition on the death of Thomas Wardgare who died holding this estate in socage of the Crown, *Rot. Esch.* 33 Eliz., pt. 12.

[q] The records of the Cobham family, extracts from which are printed in the *Collectanea Typographica*, afford other illustrations of the statements in the text.

Thus, "Stephen de Cobham holds *in capite* 40 acres called Ovenhelle in Boxley by service of sergeanty." (*Inq. post mortem* Steph. de Cobham, 7 Edw. III.)

The same estate appears to be described in the *inq. post mortem* of Thomas de Cobham, of Rundal, in 17 Ric. II., viz., "he held of the king

Of the lands converted into socage by the military tenants of the Crown, we need not give more than one or two examples. The lord of the manor of Hoo in this way changed the military service of the tenant of Oxenhoath, a subordinate manor, to a socage payment*. In the same way we find that the Abbot of St. Augustine's changed the military tenure of his lands in Preston to a socage tenure in fee-farm†. Having been held in barony at the Conquest, according to Domesday Book, this ancient change of tenure could not create any gavelkind qualities in the land[r]. It was held, with the hundred of Preston, in socage of the abbot by Juliana de Leybourne, according to the inquisition taken on her death, 3 Edw. II., No. 56.

* Hast. v. 63.

† Gale, *Decem Script.* 1863; Hast. ix. 136.

The small manor of Roting, in Pluckley, contained "half a yoke of demesne land" at the Conquest, which the same abbot held at first in barony, and afterwards alienated in free socage to the family of Roting‡.

‡ Hast. vii. 473.

in capite by the service of finding for the king in each of his wars in Wales one horse, one wallet, and one broche (either a fastening for the wallet or a vessel for wine, according to different interpreters), a toft, and 12 acres of arable with 22 acres of pasture, and 13s. 4d. in annual rents of assize at 'Wenhill' in Boxley." (Blount, Ten. 61; Hast. iv. 345; Co. litt. 108 b.) See also the *inq. post mortem* of Reginald Cobham, taken in 35 Edw. III., according to which, "he held the manor of Aldington of the king *in capite* as of his castle of Rochester, by castleguard rent of 14s. in lieu of all services; also the manor of West Cliffe *in capite;* also the manor of Oxsted *in capite as of the honour of Boulogne* (Co. litt. 77 a.), and the manors of East Shelve and Burdfield of the king *in capite* as of Dover Castle, by the service of 3s. 9d. castleguard rent," &c.

[r] "In Preston hundred the Abbot of St. Augustine's himself holds Preston, which paid land-tax for five sulings, eight ploughlands of arable, two in demesne.... Of this manor Vitalis has one suling and half a yoke. He has there one ploughland, and seventeen labourers holding half a ploughland." It was held by Sir Thomas Moyle in socage *in capite*, by a grant of Hen. VIII. in his 36th year, and remained in his ownership when all his gavelkind lands were disgavelled in 2 and 3 Edw. VI.

An old deed preserved among the archives of the same abbey shews that "a jury of grand assize found that the ancestors of Richard de Ros had held a moiety of Plumsted of the abbot at a fee-farm rent *."

* Gale, *Decem Script.* 1942; Hast. ii. 206.

Had this been gavelkind, a jury of gavelkind tenants would have tried the question; but Domesday Book proves that it was held in barony.

The register of the abbey also contains a note that certain of their military lands were granted in socage to a tenant whose service consisted in advising the abbot on matters of legal business.

The monasteries in Kent, which held their lands in francalmoigne, possessed the privilege, as we have seen before, of alienating without special license from the king, as was conceded early in the reign of King John, "after examination of many old evidences †." But the privilege, as we have already noticed, was rarely exercised. There are, however, a few estates in Kent which were anciently and originally held in francalmoigne, and given in socage before the dissolution of monasteries *.

† Abridg. Pleas of Crown.

* Such were the estates in Westwell and Little Chart, mentioned above in the case of *De Bendings* v. *Prior of Christchurch*. Almost all the lands held in socage of the monasteries were gavelkind. See the account given by Hasted of the reputed manor of Chartons, in Farningham, and the inquisition there cited, taken on the death of W. Isley in 4 Edw. IV. (Hast. ii. 519.)

The manor of Down Barton, in St. Nicholas' parish, was held in socage of the Prior of Christchurch from very ancient times. The Escheat Roll for the year 4 Hen. VII. shews that "Thomas Pulter held of the Prior of Christchurch in socage a house called Frechinghurst, and a mill in Sandhurst, and the manor of Down of the same prior, *but the jurors did not know what services were due for it.*" A verdict of this kind was equivalent (in Kent) to finding that the tenure was knight-service if the king were the chief lord, and that it was gavelkind if a private person were lord. (Co. litt. 77 b.) But the tenure was not taken in any case to be

Thus the small manor of Halton, in the parish of Alkham, was very anciently alienated to a socage tenant, having originally been held by the monks of Christchurch in francalmoigne, "of whom William de Halton held at the ferme (fee-farm rent) of £9 in the reign of Stephen; after whose death his widow Iden (Idonea) claimed it, as holding it to her and her heirs as an hereditary fee, but she afterwards renounced her right and title to it[t] *." * Hast. viii. 138.

knight-service *in capite* until after a second enquiry (called the *melius inquirendum*). (*Wheeler's Case*, 6 Co. 6.)

For other socage estates held of the Priors of Canterbury, see Hast. ix. 369 (Geddings), iv. 377 (Gallants), ii. 119 (Hockenden), and notices in his history, *passim*.

[t] The *Inq. post mortem* of Henry Herdson (a subsequent owner of Halton), taken in 2 and 3 Ph. and Mary, appears to prove that this, as well as his other estates, were held at common law. His eldest son is there said to have been the next heir, although under the terms of his will the younger sons obtained part of his lands in this county.

CHAPTER XVI.

Disgavelled Lands.

Difficulty of identifying disgavelled lands in the last century.—Opinions of Robinson.—Inaccuracy of Hasted.—The Real Property Commission.—Answers to their questions, with cases.—Opinions of Kentish lawyers.—Two distinct periods of disgavelling.—Disgavelling by prerogative.—By license.—Privilege of the Archbishops of Canterbury.—Entries in the Book of Aid.—*Aucher's Case.*—*De Becland's Case.*—Lands disgavelled which were held immediately of the king.—*Gatewyk's Case.*—*Northwood's lands.*—*Cobham's lands.*—Second period.—Disgavelling by Act of Parliament.—*Guildford's lands.*—*Wyatt's lands.*—Dissolution of monasteries.—Confusion of tenures.—Its cause.—Castleguard lands.—"The Bill for gavelkind."—Will of John Roper.—A great part of Kent disgavelled.—History of the Act of 1548.—Construction of the Acts.—*Wiseman* v. *Cotton.*—The collateral customs of gavelkind.—*Doe* d. *Bacon* v. *Brydges.*—Later disgavelling acts.—Lands affected by both the great disgavelling acts.—Lands of Sir J. Baker, Sir T. Cheyney, Sir J. Hales, Sir T. Kempe, Sir A. St. Leger, and others.—Lands affected only by 31 Hen. VIII. c. 3, of Lord Borough, Sir E. Boughton, Lord Cromwell, Sir C. Hales, and others.—Lands affected by the Act of 2 and 3 Edw. VI. alone, of Sir G. Blage, Sir Martin Bowes, Th. Darrell.—Of Sir Walter Hendley. List of his estates in Maidstone and elsewhere.—Lands of Sir E. Walsingham.—Conclusion.

ONE of the most remarkable results of the statute abolishing the feudal tenures has been the steadily increasing neglect of the disgavelling statutes, chiefly on account of the confused state of the public records, and in particular of the Escheat Rolls and other *series* of inquisitions *post mortem.*

In the sixteenth and seventeenth centuries the lands which had been disgavelled were tolerably well known, but an ignorance of the subject began to prevail at the end of the last-named period. Thus we find claims of gavelkind tenure made upon lands which the Earl of

Sussex proved in 1706 to have been disgavelled by means of an *inquisitio post mortem*, *Lennard* v. *Sussex*. And Robinson, writing in 1740, speaks of "the difficulty complained of in the last age, *and now grown greater*, of proving what estates the persons comprehended in the disgavelling statutes were seised of at the time[a] *." * Bk. I. c. vii. *fin.*

He therefore with some diffidence asserted that nearly as much land was in his day treated as gavelkind, as before those statutes were made. Hasted, writing some years afterwards, repeats these remarks, and notices the general practice "of waiving the privileges of the disgavelling acts." He himself was careful to mention in his history the names of the persons whose estates were disgavelled, and in some instances to shew that particular lands were in their ownership when the Acts were passed. But the authority of his remarks was much impaired by the undiscriminating way in which he wrote of all tenures; for example, he inserts the words, "and whose lands were disgavelled," &c., in his notices of lands held by ancient knight-service, grand and petty sergeanty, and castleguard, in the same way as when the land was originally gavelkind: on one occasion he inserts the formula in a description of land in Sussex; and on several others, after intimating that the land was disgavelled, he writes as if it remained nevertheless partible by the customs of gavelkind. Thus he mentions a grant of certain lands in Chatham to Sir T. Moyle in 36 Hen. VIII., and the alienation of the same to Sir T. Kempe, who retained them till the 9th year of Elizabeth. Now all the customary lands held by these owners were disgavelled by the Act of 2 and 3 Edw. VI. By his own showing it

[a] *Wiseman* v. *Cotton*, 1 Sid. 138.

was then in the tenure of one or other of them; yet he continued to assert that these lands were held by co-heirs in gavelkind [b]."

Another example will illustrate the uselessness of Hasted's account of the disgavelling Acts.

"Christopher Hales," he wrote, "was possessed of Barton Mill in Canterbury with a meadow belonging to it, holding it *in capite*, and by knight-service. (*Rot. Esch.*) His lands were disgavelled by the Act of 31 Hen. VIII. He died in the 33rd year of that reign *."

* Hast. xi. 147.

Now if these sentences do not indicate his belief that the lands in question were disgavelled, then the numerous similar passages in his history are equally meaningless. But if he did mean to say that they were disgavelled, then the other passages are not of any authority, for the records shew that the tenure was not changed.

In 32 Hen. VIII., one year *after* the first general disgavelling Act, the King granted to Sir C. Hales, among many other estates,—

"Two pieces of land at Fullbrook in St. Mary's Northgate, near Canterbury, and the Grange belonging to the late Prior of Christchurch, and the Barton Mill and the Barton, &c., with Cotton garden, and Hopland meadow (seven acres) in Chartham, (describing the boundaries minutely)," &c.

He died before the next disgavelling Act was passed,

[b] These lands were in the ownership of Sir Thomas Moyle in 2 and 3 Edw. VI., when all his gavelkind lands were disgavelled, as is shewn *inter alia* by the following extracts:—

"1. Grant to Sir T. Moyle and his heirs of lands in Chatham called Waslade to hold of the Crown by knight-service."—(Pat. 36 Hen. VIII.)

"2. License granted by the Crown to Sir T. Moyle to alienate these among other manors and lands to Sir Thomas Kempe."—(Pat. 2 Elis. 9.)

But "Waslade" also appears in the lists of lands in the Exchequer which were held originally by knight-service.

seised of the foregoing lands, which were divided among his co-heiresses.

It is plain therefore that Hasted's method of mentioning the disgavelling acts, without giving dates of the ownership of particular lands by persons mentioned in them, must greatly impair the usefulness of his statements. It is indeed probable, as was noticed above, in writing of the castleguard manor of Ashford, that he fell into a confusion between the manor and demesnes held at common law, and the gavelkind lands comprised in the bounds of the manor. For these reasons, among others, his statements respecting tenures have been but little regarded.

Since his time the uncertainty has become more prevalent, as will be seen by the evidence of the Kentish gentlemen examined by the Real Property Commissioners.

The following questions were circulated with others relating to gavelkind, borough-English, and ancient demesne.

"*Question* 7. Is there any prevailing uncertainty as to what estates are subject to gavelkind, and what are not?"

"*Question* 8. Have you in practice found any inconvenience to arise from this uncertainty * ?" * 1 Report, Appendix.

To the first question some of these gentlemen answered in the negative °, but the majority called the attention of

° *Ans.* 7. "I believe not to any extent of serious inconvenience. In Kent I believe property is in practice treated as gavelkind, whether it is supposed to have been disgavelled or not."—(*T. G. Fonnereau, Esq.*, 1 *Rep. App.* 205.)

Ans. 7. "I conceive that cases may occur in which it may be difficult to identify the lands disgavelled by 31 Hen. VIII. c. 3, or to distinguish them from those which remained subject to the tenure. However, generally speaking, I believe it is well known in the vicinity in which gavelkind lands are situate, what estates are subject to the tenure, and what not."—(*Gilbert Jones, Esq.*, 1 *Rep. App.* 213.)

the Commissioners to very serious results arising from the uncertainty which prevails.

And it is certain that this inconvenience must increase as the contents of the public records become more widely known, especially as no lapse of time is sufficient to alter the tenure of the land. So much was this felt to be the case, that Mr. W. Clowes, in his answers to the Commissioners, declared that he would not accept a title to real property in Kent without proof either of its having been disgavelled, or a gavelkind title made out (up to the date of the first of these acts *).

* 1 Rep. App. 153, and 113.

Further, Mr. Bell, an eminent authority on the law relating to Kent, thought it very probable that these uncertainties would arise:—

"You find it," he wrote, "generally laid down that all lands in Kent are gavelkind, and that therefore no great inconvenience arises; it must be very clearly proved they are not gavelkind, and it is said such proofs cannot be given. I bought an estate the other day, where it was perfectly clear it was not gavelkind. I have purchased three estates in Kent, where I am perfectly satisfied that none of them are of gavelkind tenure; and now that the records are so thrown open by the Parliamentary Commissioners, I have no doubt many more such will be found. I ascertained by inspecting the records that they (the estates above-mentioned) had been disgavelled †."

† Ibid. 228.

Mr. Sidebottom, another eminent counsel, produced additional evidence of the uncertainty and inconvenience mentioned in the questions above cited, and furnished

Ans. 7. "I have never found any inconvenience; *primâ facie* all lands in Kent are considered gavelkind; and it rests with the party disposing of the estate to shew that they have been disgavelled."—(*F. Turner, Esq.*, 1 *Rep. App.* 286, *and see evidence of G. Morley, Esq., ibidem*, p. 350.)

the particulars of a case recently laid before himself and another counsel.

"The legal estate had been got in, or supposed to have been got in, under the direction of the Court of Chancery, and the Master's report had been made in the year 1810. I thought the purchaser was entitled to evidence to prove this, unless he chose to be satisfied with the Master's report; a solicitor had investigated the thing a good deal, and had taken great pains, and he had discovered that the property in the abstract, laid before the other counsel, had in fact been disgavelled, and that counsel mentioned it to me; and of course, when the abstract came back to me again, I insisted, as the other counsel had done, that the legal estate should be got in by a conveyance from the heir at common law. It was afterwards discovered, that though the land in the other abstract of title was disgavelled, yet the land in my abstract was *not* disgavelled, and that therefore the legal estate in my case was properly got in under the direction of the court, but it was not so with respect to the other purchase. There was the same vendor in both cases, and the title was deduced in both cases in the same way; the question of gavelkind or no gavelkind never occurring until the period in which the legal estate was to be got in. When we arrived at that period, then it became necessary to ascertain the fact; and, therefore, with an estate comprised in the same deeds, sold by the same person, and purchased by two different purchasers, with respect to one there was a good legal title, and with respect to the other there was a bad legal title, and that merely arising from the difficulty of distinguishing what was gavelkind, and what was not gavelkind."

It is no doubt difficult in certain cases to prove that lands were in the ownership of one who had his customary estates disgavelled, at the date of the passing of the Act. But it is much less difficult in general than is supposed. There was a case a short time back, in which the tenure of an estate depended upon proof of the date of a conveyance one day

later or one day earlier than the disgavelling of the lands of the purchaser, but such instances must of course be very rare. The most remarkable thing is, that the purchasers of disgavelled lands should not have invariably demanded, and kept among their title-deeds, extracts from the Patent Rolls and inquisitions *post mortem* to prove the tenure. No uncertainty would now be felt, or at any rate but little, if these extracts had been handed down from the date of the abolition of the feudal system, before the records became difficult of access. But at the present day it is quite possible to gain the same evidences of tenure although it is necessarily hard in some cases to identify the land [d].

[d] Mr. Walters stated in his answer to the Commissioners' Circular that no uncertainty as to tenure prevailed in Kent, and that no means existed of ascertaining the disgavelled lands. Subsequently, however, a note was received from him, in which the following passage occurs:—

"Having stated that I had never known an instance in practice, in which any doubt existed as to particular lands in Kent being gavelkind or not, I think it right to mention, that since I attended the Commissioners I have learnt that very recently the following case occurred. A regular title was shewn to lands, and it appeared that (though not stated to have been disgavelled,) they were formerly the estate of an imdividual whose name occurred in one of the disgavelling Acts; the purchaser's solicitor made inquiries for the purpose of ascertaining, if possible, whether the particular lands were part of those which were disgavelled, and by means of a county history, and an *inquisitio post mortem* which was discovered, he found that these were part of the disgavelled estates, and that on the death of the man, the tenure of whose estates was so discharged, they descended to his common-law heirs. The land had since been treated as gavelkind, and (a legal estate being outstanding) the gavelkind heirs (being infants) were declared by the Court of Chancery (proceeding on the report of Master Harvey) to be infant trustees within the statute of Anne, and they conveyed accordingly, *each* conveying only *his* share. The discovery recently made induced counsel to treat the land as disgavelled, and to require a conveyance from the common-law heir, his former conveyance being limited to a share. This occasioned a second application to the Court of Chancery, that heir having died, leaving an infant son, who has conveyed under the order of the Court."

There were two distinct periods in which it became usual to disgavel customary lands. The first comprises the reigns of King John, Henry III., and Edward I.; the second, excepting the comparatively unimportant acts passed in favour of Sir R. Guildford and Sir H. Wyatt, extends from the dissolution of monasteries to the 21st year of James I. The first is of far less importance than the second, and it will be convenient to consider it separately.

In the period of disgavelling by prerogative it seems to have been thought at first, that the king might by his own grant or by deputing his power to others change any gavelkind into military tenure.

We find, therefore, that the superior lords of the fee were permitted to disgavel lands within their manors subject to the king's ratification of the proceeding. Thus, "Henry Pratt had the confirmation of the king for the change of four 'yokelands' and five acres of gavelkind land into frank-fee, to be thenceforth held by the service of half a knight's-fee, as the charter of Baldwin de Betun, Earl of Albemarle, testified *."

* Fin. 8 Joh., Lamb. Per. 533.

But a more extensive privilege was given to the Archbishops of Canterbury by King John, as may be seen by the wording of the charter given to Archbishop Hubert in his third year, printed by Lambarde "from an ancient

He further cited the case of *Wiseman* v. *Cotton* from Siderfin, to shew that an uncertainty prevailed in the reign of Charles II., and intimated a belief that the Courts would presume "a regavelling Act," where the lands have "*from time immemorial* been treated as gavelkind." But such a case could hardly occur. The question of tenure generally arises after the land has been controlled by a long series of wills and family settlements, preventing its being "treated as gavelkind." Some few estates appear to have been so treated in the early part of the last century, which it is said were disgavelled or held anciently by knight-service.

roll remaining in the hands of the deceased reverend father, Matthew Parker, Archbishop of Canterbury *."

* Fin. 8 Joh. Lamb. Per. 531; Somner, 58, 60.

This charter contained clauses to the effect following:—

"That the archbishops may convert into knight's-fee any lands of the fee of their church held previously in gavelkind .... The tenants of such lands shall owe the same duties and enjoy the same privileges as other knights of the archbishop, so nevertheless that the accustomed quit-rents shall continue to be paid, and the customary labours, works, and provisions[e] due from the land shall be commuted for money rents. And the king for himself, his heirs, and successors, ratified prospectively all such conversions of tenure by the archbishops."

The entries in the Book of Aid, 20 Edw. III., of lands disgavelled "per novam licentiam archiepiscopi," among other ancient evidences, prove that the privilege was exercised. The inquisitions *post mortem* of tenants of the archbishops, a list of which is in the Red Book of the Exchequer, will shew what lands were thus held at the same time by knight-service and an ancient quit-rent.

In the passage of the Red Book just cited (fol. 132), one knight's-fee in "Cassingham" is shewn to have been held of the archbishop by a military tenant. This included 120 acres of land at *Keynsham* in Rolvenden, which had been disgavelled by the archbishop, and which was held by knight-service and a rent of 10s. 2d. *per annum*. This appears by the proceedings in *Aucher's Case*[f].

[e] "Xenia et averagia et alia opera quæ fiebant de terris iisdem convertentur in redditum denariorum æquivalentem." *Xenia* are purveyances of provisions due to the lord, as rent-hens, rent-eggs, &c.; *averagia* were labours due in the lord's land by custom (*ouvrages*).

[f] *Plac. et Assis.*, 3 Edward II., Kanc. "W. de Cassingham quondam tenuit 120 acras terræ in Rolvenden in gavilikende ... et S. Edmundus quondam Archiepiscopus Cantuar. concessit quod eas haberet et teneret sibi et heredibus suis &c. libere et quiete per servitia vicesimæ partis

Somner informs us, that the old account rolls of the archbishops' manors, preserved at Canterbury, contain various notices of these ancient enfranchisements, one of which he quotes to this effect:—

"Concerning the increased rent paid by Thomas de Bernefield, that his lands at Charing may be henceforth free from customs as knight's-fee. *Item* for the increased rent paid by Thomas de Bending, that his lands in Charing may be enfranchised as knight's-fee," &c. *

* Somn. 60.

In *De la Beclaund's Case* it appears that Archbishop Hubert granted to Alan de la Beclaund one yoke and ten acres of gavelkind land in Maidstone to hold thenceforth by knight-service and a yearly rent. This estate is thus identified by Hasted:—

"Great Buckland manor was granted (by the description foregoing) to hold in frank-fee (and not in gavelkind as before) to Alan de Bockland. His grandson Walter de Boclaunde held this estate in 1270. A *nuper obiit* was brought in the above year by Alan against his elder brother Walter for a moiety of the estate, the tenure having been changed by the archbishop without the consent of the Chapter at Canterbury. But this plea was over-ruled, and judgment passed for the defendant [s] †."

† Hast. iv. 303.

The same author, referring to an entry in the Book of Aid to the effect that Simon de Doddington paid aid for lands called Le Downe (Downe Court) in the manor of Teynham and parish of Doddington, as one-fourth of a knight's-fee, quotes an ancient deed by which Arch-

feodi unius militis et redditus 10s. 2d. per annum."—(*Robinson, Gav.* ii. c. 8.)

Hasted traces the descent of this estate by means of various wills and inquisitions *post mortem* down to recent times. (vol. vii. 191.)

[s] *Itin. Kanc.* 55 Hen. III., rot. 61 dors., extracted by Robinson, bk. i. c. v.

bishop Boniface, in 29 Hen. III., disgavelled one "yoke" of land held of him by Henry de Bourne in this manor and parish *.

* Hast. vi. 311; Philip. 21.

The estate known as Maxton or Mayston Court, in the parish of Sturry, was also enrolled in the Book of Aid as one knight's-fee, which had been disgavelled, "per novam licentiam archiepiscopi."

It does not appear that the privilege was retained very long by the archbishops, as we find no instance of its use after the reign of Henry III., and mention was made in *Kirby Lee's* and *De Beggbrook's Cases* † of estates held by military service of the archbishops, which yet were partible in gavelkind; from this it appears probable that the archbishops' privilege was given up as contrary to the policy of the law in Kent, at some time before the same right was denied to be part even of the king's prerogative.

† Palm. 163; 26 Hen. VII. 4.

Returning to the subject of disgavelling by prerogative, we find that two distinct claims were set up on behalf of the Crown, viz.:—

1. That the king might by prerogative disgavel any lands in Kent whatsoever [h].

2. That at any rate he might change the tenure of his own immediate tenants.

The first claim may be illustrated both by the grant to Henry Pratt by the Earl of Albemarle lately mentioned, and by a more important instance from the records of the

[h] 1. "Dominus Rex per cartam suam potest facere liberum feodum de tenementis de tenurâ de gavelkind, tam de illis quæ tenentur de Rege mediatè, quam de illis quæ tenentur de ipso immediatè."

2. "Nullus potest de gavelkind facere liberum feodum, nisi tantum Dominus Rex et Archiepiscopus Cantuar.: et hoc solummodo de tenementis quæ de ipsis Rege et Archiepiscopo tenentur *in capite* immediatè." —(*De Gatewyk's Case, infra.*)

Cobham family, who owned much gavelkind land in different parts of the county[i].

In the Charter Rolls of 4 Edw. I., No. 17, a deed is printed by which the king changed into military tenure all the customary lands then held by John de Cobham.

The deed may be found set out at length both in Robinson's "Gavelkind," and in the "Abridgment of the Early Pleas of the Crown," among the proceedings in *De Gatewyk's Case*, 9 Edw. II. The most important clauses are in effect as follows:—

"Whereas it pertains to our prerogative to abolish such laws and customs as diminish, instead of increasing, the strength of the kingdom, or at least to change them by our special favour in the case of our deserving and faithful followers; and whereas it has often happened by the ancient Kentish custom of partition in gavelkind, that lands and tenements (which in certain hands, when undivided, are quite sufficient for the service of the State and the maintenance of many), are afterwards divided and broken up among co-heirs into so many parts and particles, that no one portion suffices even for its owner's maintenance; we therefore ... for ourselves and our heirs grant to John de Cobham that all the gavelkind lands and tenements which he now holds in fee-simple, shall descend to his eldest son or other heir at common law in the same way as his estates held by sergeanty or knight-service, whole and without partition to him and his heirs after him, saving to all the chief lords of such lands their customary rents and services[k]."

This deed affected the tenure of Beluncle in Hoo St.

[i] See a grant of gavelkind lands in several parishes to Henry Cobham in the 10th year of King John; *Rot. Cart.*, 178 b, and *Collect. Topograph.*, vol. vi.; *Inq. post mortem* John Cobham, 28 Edw. I. 42; and *Rot. Fin.*, 28 Edw. I. 9.

[k] *Rot. Cart.*, 4 Edw. I., No. 17:—"Quod terra de Gavelkind sit de naturâ Serjantiæ." After some prefatory clauses it proceeds thus:—"Quare volumus et firmiter præcipimus pro nobis et heredibus nostris,

Warburgh, and several marshlands in the parish of All-hallows, besides the principal seat of the family in the parish of Cobham, as appears by various ancient deeds preserved in the *Collectanea Topographica* *, among which may be particularly noticed a family settlement of lands in several parishes on the said John de Cobham and his heirs, made in 19 Ric. I., and the inquisition *post mortem* already cited.

* vol. vi.

The last case of disgavelling by prerogative lands not held immediately of the Crown, is that which caused the lawsuit of *Gatewyk* v. *Gatewyk*, in 9 Edw. II.

This is an interesting and important case, the whole proceedings in which are printed in the original Latin by Robinson, as well as in the "Abridgment of Pleas of the Crown," published by the Record Commissioners. It will not therefore be necessary to mention more than the leading points.

The property in dispute is now called Scotgrove, in Ash by Wrotham. It had been held in gavelkind by one William de Fawkham as parcel of the manor of North Ash. The lady of the manor, Mabel de Torpel, granted, and the king confirmed her grant, that the said William, his heirs and assigns, should hold the land by knight-service as the fourth part of a knight's-fee, paying a yearly rent of 27s. His son and heir having alienated the premises to one Richard de Gatewyk, lately dead, his younger sons claimed their shares as co-heirs in gavelkind.

quod omnes terræ et tenementa, quæ prædictus J. C. in gavilikendam in feodo tenet et habet in com. præd. ad primogenitum suum vel alium heredem suum propinquiorem post ipsum, sicut et illa quæ per serjantiam tenet vel per servitium militare, integrè absque partitione inter eos faciendâ descendant, et eidem et ejus heredibus sub eâdem lege, salvis in omnibus capitalibus dominis suis servitiis et consuetudinibus aliisque rebus omnibus."—Given, May 4th, 4 Edw. I.

One of them was proved to have released and quit-claimed his rights, if any, when he was over the age of fifteen, and therefore fell out of the suit. The remaining brother rested his claim on two grounds, first, that the lands in dispute had not been mentioned in the king's deed of confirmation; and secondly, that no one could lawfully disgavel lands in Kent but the King and the Archbishop of Canterbury, *and that only in the case of lands held of them immediately.*

As to the first point, it was found by the jury that nine acres of arable, four of wood, thirty shillings of rents of assize, and the third part of the mansion, were mentioned in the king's charter; that fifteen acres of land had been acquired by Richard Gatewyk after the date of the disgavelling charter, and were therefore gavelkind.

And as to the lands and tenements mentioned in the charter, a day was appointed by the judges for giving their decision on the point of law.

Meanwhile the king wrote to the judges, informing them of his prerogative to disgavel any lands whatsoever, and a copy of the charter, given in 4 Edw. I. to John de Cobham, was produced from the rolls of Chancery. Notwithstanding this, the judges hesitated to decide in the affirmative, and the cause was adjourned several times during the next two years, after which time nothing further is seen respecting it. "It is plain," says Robinson, "from the time taken to consider the matter, that the information given to the court by the king's writ did not satisfy their doubt[1]."

[1] "*Nuper obiit*, by Rich. and Will., sons of Richard Gatewyk, for their reasonable parts of the inheritance of their father in Ash, against the daughters of their elder brother."—(*Itin. Kanc.*, 6 Edw. II. 80, and 9 Edw. II., C. B. 240; *Robins. Gav.* i. c. 5, ii. c. 3.)

It was admitted in this case by the court that the king might change the tenure of lands held immediately of him, i.e. of lands which were either ancient demesne or parcels of the honours of Peverel, Boulogne, and others held by the Crown after forfeiture, escheat, or purchase.

It was by this right that the lands of Sir Roger Leybourne and Sir Roger Norwood, lying within the precincts of the king's ancient demesne, were disgavelled in the reign of Henry III.

The first charter runs thus:—"Let Roger de Leybourne hold in fee of the king all his lands and tenements now held in gavelkind in Raynham, Hartlip, and Upchurch, in the county of Kent, by the service of one fourth part of a knight's-fee [m]."

These lands were all within the jurisdiction of the Court of Ancient Demesne held for the hundred of Milton. They included the manor of Gore, or De la Gare, and the manor of Mere, or Meres Court, in Rainham, which having formerly been held in gavelkind was held by Juliana de Leybourne as a sergeanty, by the service of being "lardner" at the king's coronation, as is shewn by the inquisition taken on her death [n]. The same record shews that they included marshlands now known as Slayhills, or Diggs Marsh, in Upchurch, besides 400 acres of wood and 200 acres of pasture in the parish of Raynham. Hasted mentions a confirmation of this grant made to Juliana de Leybourne, the "Infanta of Kent," in 14 Edw. II. [o]

[m] *Rot. Cart.*, 51 Hen. III. 84.

[n] "Et tenet 300 a. marisci in Upchurch de Rege in capite unà cum manerio de Mere per servitium essendi lardaria principalis ad coronationem domini Regis," &c.—(*Inq. post mortem Juliana, widow of William de Leybourne*, 3 Edw. II. 56.)

[o] Hast. vi. 27. She was the daughter of Thomas de Leybourne, son of William and Juliana above mentioned. Her father having died before

The other charter above mentioned contained a grant "that all the gavelkind lands and tenements held by Sir Roger de Norwood (or Northwood), in the king's hundred of Milton, should thenceforth be held by knight-service *." It was given in the 41st year of Henry III., and changed the tenure, *inter alia*, of the estates known as Norwood Chasteners, in the parish of Milton by Sittingbourne, and Norwood in the parish of Eastchurch [p] †.

* Ayloffe, Kalend. Anc. Chart. L. 10.

† Hast. vi. 177, 251.

"His son, Sir John de Norwood, also changed the tenure of his lands from gavelkind to knight-service ‡." He died in 13 Edw. II. seised of the manors of Harrietsham, Bredhurst, the Moat in Maidstone, and others, besides the lands in the hundred of Milton, which he had inherited from his father.

‡ Ib. v. 448, 586.

In 21 Edw. I. "the whole county was asked by what means gavelkind lands could be changed to frank-fee;" it was found by the jury appointed to answer the question that the change might take place in four ways, viz.:—

1. By the king's grant.
2. By the archbishop's grant.
3. By escheat to the lord of the manor, holding his demesnes by knight-service.
4. By surrender to such lord, "with no expectation of having the land again [q]."

But it has long been held that the customs of gavelkind are at most *suspended* by the escheat and surrender mentioned in the third and fourth cases [r].

her grandfather, she succeeded as the sole heiress of the latter in 1309. She died in 1367 without heirs, when all her estates escheated to the Crown.—(*Kentish Archæol.* v. 193.)

[p] *Inq. post mortem* Roger de Norwood, 13 Edw. I. 25.

[q] Berwick Roll, 21 Edw. I.; *Itin. Kanc.* 53, and Hil. 26 Edw. I. 21, B.R.; Brook. Abridg. Extinguishment, 14.

[r] *Wiseman* v. *Cotton*, 1 Sid. 138, and Year-book 14 Hen. IV. 2, 9.

"And the more modern resolutions do not acknowledge any prerogative subsisting in the Crown to change the law and manner of gavelkind descents by altering the tenure, even as to such lands as are holden immediately of the king[s]*."

* Rolins. i. c. 5.

In short, it appears that soon after the House of Commons became part of the legislature, it became settled that nothing short of an Act of Parliament could change a tenure inherent in the land itself†.

† Hale, C. L. 312.

The first case of disgavelling by Act of Parliament was in 11 Henry VII., when, upon a petition made by Sir Richard Guildford, his customary lands were disgavelled. The Act provided,—

"That all lordships, lands, tenements, advowsons, possessions, and hereditaments, which Sir Richard Guildford held to his own use, or which others held to his use, being estates of inheritance of the nature and tenure of gavelkind, should be from thenceforth for evermore discharged, and in no wise be of the nature of gavelkind, ne departed ne departable among heirs male, but should be of the nature of other lands and tenements held at the common law descendible, and should descend to the heirs at common law for ever, in such manner and form as if they were not, ne had not been of the nature ne the tenure of gavelkind‡."

‡ Rot. Parl. vi. 487.

His estates appear to have lain chiefly in Rolvenden and its neighbourhood. He inherited from his father, a previous attaint having been reversed, and died seised of the manors and demesne-lands of Hemsted, Halden[t], Kenchill,

[s] *De Beggbrook's Case*, 26 Hen. VIII. 4.

[t] Halden manor is said by Hasted to have been held by knight-service in 20 Hen. III. We do not find any early records of the amount (if any) of demesne land held at common law. "There are twelve *dens*, which hold of this manor; and on the court-day there are elected twelve officers called *beadles*, to collect the rents of assize or quit-rents due from them to it."—(*Hast.* vii. 186.) The grant of the demesnes to Sir H. Sidney, which he mentions, gives a full description of the estate, which should be

and Brocket in Ebeney *, none of which names occur in the Book of Aid. * Hast. vii. 177, 194, 211, viii. 496.

Frensham, once called Fraxingham, which was also among the lands of Sir R. Guildford, was always a free manor, held at common law by tenure of castleguard, paying a rent to the manor of Swanscombe for the defence of Rochester Castle; it was held in socage, the rent-service being certain, when the Book of Aid was compiled. It is mentioned among the "knight's-fees of Kent" in the *Testa de Nevil*, but we do not know what demesnes, if any, were attached to the manor before the ownership by Sir R. Guildford.

In 15 Hen. VIII., on the petition of Sir Henry Wyatt of Allington, another act, similar in its terms to that already cited, was passed to disgavel all the customary lands and tenements then in his ownership.

The particulars of these estates are not mentioned in the Act, but can be ascertained by the usual method, of inspecting the inquisitions taken on his father's death, his own death in 1532, and that of his son, Sir T. Wyatt, in 1542, besides the licenses of alienation, if any, obtained by him or for others in his favour †. † Hast. iii. 464, iv. 293, 450.

But no very sweeping Act of this kind was required until the confiscation of the monastery lands had been begun. In the winter of 1535 the surrenders of some of

compared with the older descriptions in the *inq. post mortem* of Sir Richard Guildford, &c.: it runs as follows, viz. "The manor of Halden with its appurtenance and 4 messuages, 2 tofts, 1 dovecote, a garden, 1,000 acres of arable, 200 acres of meadow, 500 acres of pasture, 100 acres of wood, 200 acres of heath (*brueriæ*, Co. litt. 5 a.), 100 acres of marshland, and rents of assize worth yearly £4 6s. 4d., lying in the parishes of Rolvenden, Biddenden, and Tenterden, held of the Queen in chief by knight-service by Sir Henry Sidney and Mary his wife, by gift of the Duke of Northumberland."—(*Pat. Rolls*, 1 Mary.)

the smaller houses in Kent were procured, viz. the abbey of Langdon, the priories of Folkstone and Bilsington, and the *Maison-Dieu* at Dover. Most of the lands belonging to them were retained at first by the Crown, but the site and real estate of Folkstone Priory, including three houses and 560 acres of land of various tenures in Folkstone, Alkham, and Cheriton, were granted by letters patent to Edward Fiennes, Lord Clinton and Saye.

This estate was aliened by license to Thomas, Lord Cromwell, just before the disgavelling Act of 31 Hen. VIII., which affected all his customary lands and estates[u]: they were re-granted to their former possessor in 4 Edw. VI.*

* Hast. viii. 181.

In the following spring an Act was passed for the dissolution of the lesser religious houses, by which it was provided that the real and personal estate of all monasteries, the yearly income of which was under £200, should be immediately vested in those persons to whom the king should assign such estate by his letters patent. An examination of these patents will shew not only the names of the grantees and the particulars of the grants, but also the confusion which was beginning to be felt about the law of tenures in Kent, to remedy which the later disgavelling acts were passed.

The King granted these estates to be held for the most part by knight-service *in capite*, and in some cases by a socage tenure, or by knight-service not *in capite*, in large portions at once, without distinguishing the original tenures of the particular lands in question, before they had fallen into mortmain. Thus a new tenure of knight-service was imposed on an estate containing both cus-

[u] License of alienation; Edward Fiennes, Lord Clinton, to Lord Cromwell; Rot. Pat. 30, Hen. VIII. 7.

tomary lands and others held from the beginning at common law.

But the confusion became still more apparent, when the dissolution of the greater religious houses was accomplished in 1539. An Act was passed for vesting in the Crown and its grantees all the real and personal estate whatsoever of the monasteries, which had been or should be surrendered to the King; and this was followed by a general surrender of all the monastery lands, which was completed within a few months. The manors and lands thus acquired were granted with great profusion to the King's favourites, with the same disregard of the limits of ancient tenures as has been noticed in the case of the smaller monasteries. It was common for a large estate, containing lands held by ancient knight-service, francalmoigne, or other superior tenures, as well as much land of the nature of gavelkind, to be settled in a new military tenure, which could not of course avail against the customary qualities inherent in some of the lands. So it was said by Chief Justice Montague, that much land, which was at first gavelkind, had come to be held in knight-service, and yet the customary descent remained, "for it runs with the land *." The state of the law respecting devise of military lands, still further augmented the difficulties occasioned by this confusion of tenures.

* Davis. 12.

It has been remarked by writers of good authority, that the landowners who shared the possessions of the surrendered monasteries, were not in general members of the old nobility, but "the creation of a new age, disregarding in every way the laws of military tenure [y]." This neglect was the natural consequence of the destruction of the

[y] Froude, Hist. Engl. vii. 7. See also the Act 1 Edw. VI. c. 4.

feudal nobility in the Wars of the Roses, and we find numerous traces of its increase in Kent, where it was more important to preserve the ancient landmarks than in any other part of England. The Escheat Rolls of the reign of Henry VII. contain the descriptions of numerous estates, the tenure of which was exactly known in the county in earlier reigns, but which are there returned by the juries in the inquisitions *post mortem* as "held of the king, but by what services the jurors are ignorant."

This may also be illustrated by the language of the Act concerning Dover Castle 32 Hen. VIII., c. 48. This Act recites the facts, that the castle belonged to the Crown, and towards its repair various manors and lands were liable to payments called castleguard rents; that these manors and lands were parcels of the baronies of the Constabulary, Crevecœur, Fobert, Peverel, Haghnet, and others; that the said castleguard rents had become much decayed and diminished for several reasons, viz. some of the lands had come into the King's hands as estates of inheritance, and many others were likely to come to him by reason of escheats, purchases and exchanges, primer seisins, wardships, and in other ways, while of others the services had been changed, so that there was every likelihood of great doubts arising as to the tenure of these lands. It was therefore enacted that the castleguard rents should be paid yearly at the Exchequer from all these lands, excepting those from time to time actually in the King's hands, and fresh regulations were made as to the customary fines and other matters relating to the Castle.

Under all these circumstances it became necessary to provide for disgavelling the lands which were being newly granted into military tenures: after some discussion in Parliament the "bill concerning the tenure of certain

lands in Kent called gavelkind," was passed on May 23rd, 1539 (31 Hen. VIII. c. 3). Although this Act has been always printed among the statutes of the realm, yet being in its nature private, *and not affecting the whole county*, it is not receivable in evidence without the production of an office copy of the parliamentary roll. The wording of the Act is as general as that of the two disgavelling Acts which preceded it, viz.:—

"That all manors, lands, tenements, &c., in Kent, of which the persons mentioned were seised, which were then of the nature and tenure of gavelkind, and before that time had been departed or departible among heirs male by the custom of gavelkind, should thenceforth be clearly changed from the said custom, tenure, and nature of gavelkind, and in no wise be departed or departible between the heirs male, but should remain, descend, &c., as lands, tenements, &c., according to the common law, and as other manors lands and tenements in Kent, *which never were held by service of socage, but then were and always had been holden by knight-service*, do descend."

And in more general terms still, the lands were directed

"To be accepted, taken, deemed, inherited, and judged as if they had never been of the nature of gavelkind, any usage or custom in the said county to the contrary notwithstanding."

The greatest accuracy is required in ascertaining the dates at which particular lands were first owned by the persons named in the disgavelling Acts. It is therefore necessary in the very numerous cases where the land of doubtful tenure formed part of the estate of a suppressed monastery, to ascertain, as a first step, whether the surrender of that religious house was completed before or after the date of this disgavelling Act [x].

[x] The monastery lands changed owners very frequently in the years immediately following the general dissolution, which makes it difficult

The Act of 31 Henry VIII. contained no schedule of the lands affected by it, and it is therefore necessary to examine in each case, where land is supposed to have been disgavelled by it, the inquisitions *post mortem* of the owners before and after the date of the Act, the Patent Rolls for the date of any grants to them of lands taken from the monasteries, and the licenses of alienation (or pardons for aliening without license) of lands disposed of during their lives, and other records to which the county histories and the collections of MSS. relating to the tenures of Kent will serve as guides in each case. These last-named collections are very complete down to the end of the 13th year of Elizabeth's reign. It is of course difficult in many cases to identify small parcels of land supposed to have been in the ownership of one of the persons named in the Act; for this reason it was said, before the records were as easy of general access as at present, that in the great majority of cases the evidence of identity is utterly gone, and that "the lands have returned into the custom of gavelkind," although still the property of the heir at common law, when on an intestacy the necessary evidence of identity can be produced *.

* Real. Prop. Comm. 3 Rep. 2.

Before making mention particularly of the disgavelled

sometimes to ascertain their owners at a given date. "The king obtruded many of the estates of the monasteries on the nobles and others, in exchange for their own lands, in order to bind them more firmly against the re-establishment of such houses, and of the Papal power."—(*Hast.* iii. 204.)

The surrenders are preserved among the records of the Court of Augmentations, and copies in some cases are to be found in the British Museum, e.g. the early surrenders in 27 Hen. VIII. of the *Maison Dieu* at Dover, the abbey of Langdon, and the priory of Folkstone. Cotton. MSS., Cleop. E. 4. Dugdale's *Monasticon*, by Ellis, will supply the dates of the rest. The actual surrender of the prior and monks of Christchurch has been lost.

estates, we may notice briefly the will of John Roper, Attorney-General to Henry VIII., in which many of the lands of William Roper, mentioned in the Act of 31 Hen. VIII., are enumerated. This will was dated Jan. 27, 1523, and is fully set out in the Act passed to establish it in 21 Hen. VIII. The preamble of this Act recites "the great trouble, strife, and variance which hath been, and yet is, and continually hereafter is like to be in Kent, by reason of the pretended last will and testament of John Roper, of Canterbury, deceased." The provisions of the will are then set forth, by which the testator had attempted to anticipate the effect of a disgavelling Act, by framing the uses on which his feoffees were to hold the lands, &c., named in his will, so that his gavelkind estates should never be parted among heirs male, but should descend in the same way as his lands held by ancient knight-service to the person "who ought to be the heir male at common law, going from the eldest issue male to one other the eldest heir and issue male of his (son's) body lawfully begotten for ever, undivided, and not parted nor partible among heirs male." The limitations of the will are exceedingly complicated, but were simplified as much as possible by the Act passed for the purpose. After the life estate limited to the widow, certain estates in remainder were allotted to the use of the younger sons respectively, remainder to the eldest, William Roper, in tail male *, and the residue of the estates after his mother's death to the same William Roper in tail male, with other limitations not needing mention [y].

* 31 Hen. VIII. c. 3.

[y] The estates of which by these means William Roper became seised, either in possession or remainder, are described in the will as including the manors and lands of Easthorne, a mansion and 200 acres at Wellhall, Mottingham, &c., in Eltham, certain other lands in Lee, Chesilhurst, Charlton, Kidbrook in the parish last named, Woolwich, and Bexley;

By the operation of the Act of 31 Hen. VIII., to use the words of Coke *,—

* Co. litt. 140 b.

> "*A great part of Kent was made descendible to the eldest son,* according to the course of the common law, for that by the means of that custom divers ancient and great families after a time came to very little or nothing."

This was the reason assigned in earlier times for the exercise of the king's prerogative of disgavelling, as we have seen in the case of *Gatewyk* v. *Gatewyk*, and the charter given to John de Cobham, *supra;* but it does not appear to be true that the decay of the old families was the immediate cause of the passing of the Act of Henry VIII.

This is evident from the names of the persons favoured by it. The true cause was the indiscriminate granting of common-law and customary lands into new military tenures, which may indeed have created a fear lest the *new families* should decay and fall to pieces by means of partitions among heirs male; we may doubt, however, whether such a fear would have been justified by events, especially after the freedom of devise was extended within certain limits to lands of every tenure.

The large estates in Kent have been kept together in our own time with little or no help from the disgavelling Acts, and it was the opinion of a distinguished historian, that "it will often be found in private patrimonies, that the tendency to consolidation of property works more

the estate called Chestfield in Swalecliffe, another at St. Dunstan's near Canterbury, the Lodge farm in Linsted, and lands in Doddington, Kingsdown, Norton, Cosmus Bleane, Herne, Reculver, Littlecote's lands in St. Stephen's, besides some more minutely described, as well as others left in more general terms to the use of his eldest son, for which the inquisition, taken on his death in 1524, should be consulted.

rapidly than the tendency to its disintegration by a law of gavelkind[z]."

But we must now consider the disgavelling Act of 2 and 3 Edw. VI. which comes next in order, and on the nature and construction of which some most important cases have been decided.

As there has been within the last few years an opinion expressed that very little evidence exists as to its history, we may consider what is known of it, somewhat more minutely than was required for the earlier enactments of the same kind.

In the Journals of the House of Lords for the 2nd year of Edward VI., under the date Feb. 27, 1548, we find an entry to this effect: "to-day were brought up from the House of Commons seven bills, viz. an act for gavell-kynde (and six others)."

On the 2nd of March was the first reading of "the bill for gavell-kynde;" the second reading was on March 4th; and on the 6th the bill was read for the third time and passed, "with the common assent of all the lords, except the Archbishop of Canterbury, the Lord Chancellor, the Earls of Rutland and Shrewsbury, the Bishops of Ely, Carlisle, Hereford, Chichester, and Llandaff, and the Lords Pointz, Sturton, and Sheffield[a]."

[z] Hallam, Middle Ages, ii. 85. A passage from the evidence of Mr. Sidebottom before the Real Property Commissioners illustrates the same point. He considered that "it was a singular thing that in Kent the large baronial estates have been kept together as well as in other counties, but that has been by settlements and wills. Being aware of the custom, and knowing how necessary it was to guard against it, they *have* guarded against it, but this is not the case with small properties."—(*Real Prop.*, 1 *Rep.*, *App.* 270.)

[a] Under the date of the 7th of March we find another entry, viz. "to-day were brought up from the Commons . . . bills, viz. 1. a bill for abstinence from flesh in Lent with a proviso, and 2. for Gavell-kind."

In the "Calendar of Acts passed in the second session begun Nov. 24, 2 Edw. VI., and continued until the 14th of March, 3 Edw. VI.," we find the fortieth Act in the list entitled, "An Act for the alteration of certain gavell-kynde lands."

It appears from the Journals of the House of Commons, that it was read for the third time and passed[b] in that session, on the 26th of February.

The form of the Act was as follows:—

"The King our sovereign lord for divers considerations him moving . . . ordaineth, that as well all the lordships, manors, lands, tenements, woods, pastures, rents-services, reversions, remainders, advowsons, and hereditaments, set, lying, and being in the county of Kent, of which Sir Thomas Cheyney and (43 others), or any of them, is seised to his or their use in fee-simple or fee-tail, the which or any of which be of the nature and tenure of gavelkind, and heretofore departed or departible between the heirs male made by the custom of gavelkind, shall from henceforth be clearly changed from the said custom tenure and nature of gavelkind, and from henceforth be to all intents, constructions, and purposes whatsoever, as lands at the common law, as if they had never been of the nature of gavelkind, *and shall descend as lands at common law*, any custom in the said county to the contrary notwithstanding." (Saving all existing interests in the lands for all persons except Sir Thomas Cheyney and the others mentioned in it.)

Notwithstanding the broad expressions of these acts, directing that the lands shall be deemed and taken in all respects to be as if they never had been of the nature of gavelkind, they have not been held to alter any custom

[b] This appears by the mark *J* in the margin of the Journal, as was proved in the case of *Doe d. Bacon* v. *Brydges* (*infra*) 6 Mann. and Gr. 282.

inherent in those lands, excepting that of partible descent among heirs male.

Thus a hybrid tenure was created, by which the land descends to the heir at common law, while the widow is endowed of a moiety; the felon's lands are free from escheat, and alienation by feoffment is permitted to the infant at fifteen, while all the old services and quit-rents remain due to the lord of the manor.

These points were established after much argument in the case of *Wiseman* v. *Cotton* [c].

A question had arisen respecting the estates of Upper and Lower Court, and other lands in Farningham, which had been in the ownership of Sir Henry Isley, when his customary lands were disgavelled by the act of 2 and 3 Edw. VI.

The lands still held by knight-service had come in the reign of Charles II. to Sir Anthony Roper of Farningham, who devised them to the trustees of his will on certain trusts; but an action was brought to set aside his will, on the ground that the land in question had lost the privilege of being freely devised, which had been allowed to all gavelkind lands in the case of *Launder* v. *Brookes*, *supra:* as if the general words of the disgavelling act had brought the land within the rule of the common law, which restricted the devise of lands held by knight-service [d]. The case was twice argued, and finally a special verdict was brought in "by a jury taken from the county of Kent [e]."

[c] 1 Sid. 135; Raym. 59, 76; Hard. 325. See also *Cotton* v. *Wiseman*, 1 Sid. 77.

[d] This case was decided in Hilary Term, 13 and 14 Car. II. (B. R. rot. 476), after the abolition of feudal tenures; but the will of Sir Anthony Roper was dated before the abolition.

[e] Where the issue touches the commonalty of the county of Kent,

to the effect following: that the lands in question were anciently of the nature of gavelkind, and that in the year 2 and 3 Edw. VI. they were in the ownership of Sir Henry Isley, at which time a private Act of Parliament was passed (reciting its provisions), which amongst other lands disgavelled all the then lands and tenements of Sir Henry Isley, to all intents, constructions, and purposes whatsoever, so that they should descend as lands at the common law, any custom in the county to the contrary notwithstanding.

But it was resolved by the whole court, "upon solemn argument," that the custom of free devise remained notwithstanding the general language of the Act in question, on the ground chiefly, that these general words concluded with a very special reference to the *descent* alone, and that subsequent words may and often do abridge the generality of a preceding clause[f].

Importance was attached by the judges to the phrase in *Co. litt.* 140 b., above cited, assigning the fear of partible descents as the sole reason for passing these disgavelling acts, (as it certainly was the reason for several of the more ancient instances of disgavelling by prerogative).

It was remarked that the Act of 31 Hen. VIII., by which the "Custom of Welsh gavelkind" was destroyed, permitted the custom of devise to remain unaltered. An objection was made to this argument, on the ground that

the jury was always taken *de corpore comitatus*. See Robinson, Gav., on trials *per totum comitatum Kanciæ*, bk. ii. c. 7, and *Beddyl* v. *Crowther*, there cited.

[f] "Subsequent words may abridge and qualify, but not destroy, a preceding general expression."—(*Altham's Case*, Dyer, 56, 8, Co. 154 b; Co. litt. 299 a; *Stradling* v. *Morgan*, Plowd. 205.)

"Welsh gavelkind" and "Irish gavelkind" were in all respects utterly different from the true gavelkind of Kent. *Case of Tanistry* *. * Davis. 29.

But though this objection has been shewn in an earlier chapter to be perfectly legitimate, the expression used by the judges has ever since caused an erroneous fashion to be adopted of calling every custom by the name of gavelkind, whether on freehold or copyhold, in England or elsewhere, where the partition among heirs male prevails [g].

And Twisden, J., "very learned in the customs of Kent," certified the practice in the county of devising disgavelled lands freely, though held by knight-service.

The judges further divided the customs of gavelkind into the general custom of partition in descent, without which the tenure could not exist, and the special or collateral customs, which are rather privileges annexed to the tenure than parcel of it: a division, which has since been adopted generally into the law of gavelkind. They therefore refused to admit, that a statute, which mentioned *the custom* of gavelkind only, could be applied to "the whole bundle of customs †," (saying in the quaint † Lev. 505. manner of the time:—"Gavelkind est la mere et ceux customes avant-dictes sa daughters, vel gavelkind est la

[g] See the cases and arguments on this point more fully set forth at the beginning of this book. We may again remark here, that in the Statute changing the customary descent of lands in the Soke of Oswaldebeck in Nottinghamshire, 32 Hen. VIII. c. 29, the word gavelkind is not used. It enacted simply, that "the meases, lands, and tenements in Oswaldebeck Soke, which be pretended by a custom there to be partible among and between heirs male, shall from henceforth be clearly changed from the said custom, and never hereafter be departed or departible among such heirs male." See also the statute concerning customary lands in the city and county of Exeter, 9 Elizabeth.

full evidence" that some of the lands in question had been disgavelled by the Act of 2 and 3 Edw. VI., while in the ownership of William Roper, Sir Henry Isley, and Reginald Peckham; while others, which were ancient knight-service lands held of the Crown, yet would have been made descendible to the eldest son by the same statute, had they been gavelkind. The mode of proof adopted was the production of copies of grants from the Crown before the Act, of the Act itself, and of inquisitions *post mortem* taken after its date.

The remaining disgavelling acts are comparatively unimportant, partly because so much of Kent was disgavelled* that little inconvenience was expected to result from the few instances remaining of customary land held by knight-service, and partly no doubt that the increasing liberty of devise enabled private persons to bar the custom by that means, until the abolition of the feudal tenures removed the last restraints on this liberty, by converting military tenure into free and common socage.

* Co. litt. 140 b.

By entries in the journals of the House of Lords, we learn that on March 3, 1558, (1 Elizabeth,) an Act was passed "for exchanging the nature of the gavelkind land of Thomas Brown, (of West Beechworth in Surrey,) and of George Browne."

Eight years later a Bill was passed, on December 7, 1566, (9 Elizabeth,) "to alter the nature of gavelkind in the lands of Thomas Browne, Esq."

The last Act passed for a similar purpose is dated May 27, 1624, (21 Jac. I.[1]) It was entitled, "An Act for

[1] This Act is generally quoted with an apparent inaccuracy, as if the two persons first-named were alive at the date of its passing. See Robinson's Gavelkind, *ad finem*. This might easily lead to mistakes in endeavours to identify the lands affected by it. Its short title is, "Sir John

the altering of the tenure and custom of the lands late of Thomas Potter, Esq., and the lands of Sir George Rivers, Knt., and of Sir John Rivers, Bart., lying all in the county of Kent, and of the nature of gavelkind, and to make them all descendible according to the course of the common law, and to settle the inheritance of them on the said Sir John Rivers, and the heirs of the said Sir John Rivers, and Dame Dorothy Rivers, his wife."

Their estates included at that time, among others, Gaysum and Well-street in Westerham, the manors of Ashurst, with that of Buckland appendant to it, and Chafford's-Place in Penshurst; some of which, however, were never of the nature of gavelkind.

It may be here remarked, as an instance of the inaccuracy of some of the Kentish historians on the subject of tenures, that Harris, after mentioning the preceding Acts, remarks, "no doubt very many estates in Kent have been since brought into the same circumstances *," i.e. disgavelled since 21 Jac. I.

* Hist. of Kent, p. 466.

We may now very briefly give the lists of persons whose estates were disgavelled by the various Acts mentioned in this chapter, with a few references to the records, which contain authoritative descriptions of their lands.

First, we may take those persons whose names occur both in the Act of Henry VIII., and in that of Edw. VI.

Secondly, those whose lands were affected only by the Act 31 Hen. VIII. c. 3.

Thirdly, those mentioned in the Act of 2 and 3 Edward VI. [m]

Rivers' Bill," as in the journals of the House of Commons for 1624: "27th May. Sir J. Rivers' bill came down from the Lords with alterations."

[m] In addition to the copies of this Act above described, we may notice

I. Persons whose names appear both in the Act 31 Hen. VIII. c. 3, and in that of 2 and 3 Edw. VI.

1. John Baker.

He was knighted before the Act of 2 and 3 Edw. VI., and died in 1558. By the inquisition on his death we learn that his eldest son succeeded to his disgavelled lands, and those which had never been gavelkind, e.g. the manors and lands of Teston, Hunton, West Farleigh, and others which had belonged to Sir T. Wyatt, attainted for treason *.

* Co. Entr. 78.

Hasted describes some of his disgavelled lands, e.g. those in Kingsnoth and Pluckley, formerly belonging to Battle Abbey †.

† Hast. vii. 487.

In 32 Hen. VIII. he purchased Comden in Frittenden, of which he died seised, and in the same year had a grant of much land in Cranbrook and the neighbourhood, called Delingden, Brompton, Highfields, Farmlands and Nutbeame meadow, and another estate in Headcorn and Staplehurst, with Buckhurst and Wallinghurst in Frittenden, described in the letters patent more particularly. The records called *Originalia* for the 32nd, 33rd, 34th, and 36th years of Henry VIII., and the 2nd year of Edward VI., shews grants to Baker of Abbotsmarsh, the reversion

that Hasted possessed a copy, which was offered among his other collections to the Trustees of the British Museum after his death. It is much to be regretted that more of his private MSS. (collected in 62 vols.) were not bought upon that occasion. Among those which were refused, were several valuable documents, including a copy of the Book of Aid with Petit's notes, a collection of private and personal acts relating to the county of Kent, a copy of the proceedings in the "gavelkind case" of *Lennard* v. *Sussex*, with matters relating to all the manors and lands there claimed by the (supposed) heirs in gavelkind, and other materials for an accurate account of the tenures of Kent. The index to the MSS. which were purchased of his executors is marked in the British Museum Catalogue, "Add. MSS. 5,536-7."

of Morehouse, and the lands of Combwell Priory, with many other manors and lands in Kent, more fully described in the inquisition taken on his death in 1558. Before the date of the second disgavelling act he had acquired the whole fee of his family estate at Sissinghurst, and the lands of the Trinity Chapel near Cranbrooke (now destroyed).

2. Sir Thomas Cheyney.

He died in 1559, owner of very large estates in Kent, the greater portion of which were either held by ancient knight-service, or had been disgavelled before 1548. Besides the account given by Hasted, his will and the inquisition taken on his death should be examined, as well as the record of the proceedings in *Cheyney* v. *Edolfe*, Chancery proceedings *temp.* Elizabeth, cc. 11. (The case was removed to the Chancery Court formerly held in St. James's Church at Dover).

The list of his estates, though set out in the inquisition, is too long for insertion here, but the following references will indicate the position of a great portion of his disgavelled estates.

By a license of alienation in the Patent Rolls 29 Hen. VIII., pt. 1, we find that John Alban aliened to him in fee 144 acres of arable and 214 acres of marsh in the Isle of Harty (there more particularly described).

On March 16, 31 Hen. VIII., the King granted him the site of Faversham Abbey, with its lands in Faversham, and Nagdon Marsh in Graveney[n]. In the next year he received a grant of Chilham Castle and manor, with its lands in twelve boroughs, and its twelve dens in the Weald (*le dennis in Le Wild*), with Poynings Marsh in Tenham, and other lands most minutely described by

[n] Lewis, Hist. Faversh. 22; Rot. Pat. *ejus anni*, pt. vi.

boundaries, having belonged to Thomas, Lord Cromwell (Essex), when all his lands were disgavelled *. In his 35th year the King granted to him the site and lands of Davington Priory, with two-thirds of the manor of Monkton, and lands in many parishes †. Among his other disgavelled lands were the site and possessions of St. Lexburgh's Nunnery in Sheppey ‡, lands belonging to the manor of Patrixborne, and others belonging to small suppressed chantries °.

* *Orig.* pt. 2, 32 Hen. VIII. 121.

† *Orig.* pt. 1, 38 Hen. VIII. 68.

‡ *Orig.* 29 Hen. VIII. 95.

It appears from the inquisition on the death of John Boyes, in 35 Hen. VIII., that Sir T. Cheyney had aliened to him "Silstod Hall, with 200 acres of land, Horsemead borough in Denton, with lands in Wootton, Okeridge," &c., to hold of him by knight-service, as parcel of the barony of Chilham.

3. Sir Roger Cholmley.

In 36 Hen. VIII. the King granted to him the manor of North Cray, with lands in that parish (which were aliened to Sir Martin Bowes), besides other manors and lands P.

4. John Guildford (of Benenden).

He was knighted before the Act of 2 and 3 Edw. VI. Most of the customary lands belonging to his family had been disgavelled in 11 Hen. VII. Henry VIII. granted to him the manor and lands of Huntingfield, &c., in his 35th year §.

§ *Orig. ejus anni*, pt. 3, 92.

5. James Hales.

He was also knighted before 1548. He died in 1 and 2 Phil. and Mary, and was succeeded in his disgavelled and knight-service lands by his son, Humphry Hales. Among

° *Orig.* pt. ii. 31 Hen. VIII. 235, and pt. iii. 38 Hen. VIII. 68; Rot. Pat. 32 Hen. VIII., pt. v.

P *Orig.* pt. iii. 36 Hen. VIII. 114. For his estates in Woolwich see the reference in Hasted, vol. i. p. 450.

the former were the estates of St. Sepulchre's Nunnery in Canterbury, comprising the site and 422 acres of land in several parishes[q]. In the previous year he acquired the manor and lands of Otterpoole in Limne, with other estates in Hougham, Midley, &c., which all were in his ownership at the date of the second disgavelling act.

6. Thomas Harlakenden.

7. (Sir) Thomas Kempe of Ollantigh.

Some account of his family is given by Hasted*. For his disgavelled lands the inquisition taken on his death, in 1607, should be consulted. It may be noticed that in 6 Edw. VI. he aliened to John Tuck, Esq., 40 acres of arable and wood in Hothfield and Benenden, belonging to the manor of Boughton Aluph. There is an entry respecting his ancient knight-service lands in Cyriac Petit's notes on the Feodary of Kent, under the head of Boughton Aluph, to this effect:—

* vol. vii. 348, 561.

"The one knight's-fee once held in 20 Edw. III. by T. de Gatesden, J. Paynell, and G. Laverton ... was held formerly by Thomas Kempe (Bishop of London), then by Sir William Kempe, and afterwards by Sir Thomas Kempe (senior), who died in 13 Hen. VIII."

Reference is there made to the inquisitions *post mortem* of the Bishop of London, 4 Hen. VII., and Sir W. Kempe, which may be thus summarised:—

"T. Kempe, Bishop of London, died in 4 Hen. VII., seised of the manors of Boughton Aluph, Stowting, and Ashmerfield (part of the military estate of St. Augustine's Abbey), with the manor of Hadlow held by knight-service, the advowson of Staplehurst, and 23 a. of land in Godmersham held of the Prior of Christ-

[q] Dugd. *Monast.* iv. 414; Hast. xi. 183; *Orig.* 38 Hen. VIII. pt. i. p. 70.

church by services unknown to the jury. Thomas Kempe was his heir."

"William Kempe held Hamhurst, 60 a. in Staplehurst, the advowson of that parish, the manor of Wilmington with its lands in Benenden and elsewhere, and eleven other parcels of land in Staplehurst held of the manor of Marden, by military service."

Sir T. Kempe of Ollantigh purchased in 14 Eliz. the manor of Otterpoole, and other (disgavelled) estates of Sir J. Hales, by royal license.

* Hast. vii. 403, *et pass.*

8. Sir Thomas Moyle, of Eastwell *.

9. William Roper.

Many of his estates have been described, *supra*, in the will of John Roper of Canterbury, and the private Act passed to establish it in 1530.

† Hast. viii. 428.

10. Sir Anthony St. Leger †.

A comparison of the inquisition taken on his death in 1559, with the grants (of lands taken from suppressed monasteries) made to him before 1548, shews that Sir A. St. Leger owned a considerable amount of disgavelled land among his other estates in Kent. Henry VIII., in his 36th year, granted to him by letters patent the estates of St. Augustine's Abbey in Kennington [r], as well as a considerable property in Headcorn, belonging to 'Kent's Chantry' in that parish. Among the lands comprised in this grant were the manor and rectory of Sellinge, with houses, &c., formerly belonging to the rectory of Faversham, with houses and lands belonging to the said chantry, "Stonefield, Westfield, Ribertsfield, and Kirksales," and others in Headcorn and Tunstall, Westhall in Staplehurst, the manor of Stalisfield, &c. In the same year he purchased, by the King's license, the manor of Brookland, and

[r] Hast. vii. 549; *Orig. ejus anni*, pt. iii. 80.

certain lands called "Bekards," formerly belonging to the Archbishop of Canterbury, and afterwards to Richard Cecil. Other grants were made to him in the 30th and 32nd years of Henry VIII., as appears by the index to the *Originalia* for that reign.

11. Thomas Wilford.

He is said by Hasted to be the same person as Thomas *Wilsford* of Hartridge, in Cranbrook. Thomas Wilford, according to an inquisition *post mortem* taken in 7 Eliz., held at that time of the Crown a house and 76 acres of arable, meadow, and wood in Cranbrook, besides an estate called Lovehurst, and another of 20 acres in Marden.

12. Sir Edward Wootton.

At his death in 6 Edw. VI. he was found by inquisition to have held among other estates one third of the manors of Old Langport, and of St. Mary Lyng, Okemere in St. Mary Cray (part of the honour of Peverel), with a large estate in Boughton Malherbe, there described more particularly. He also held the manor and advowson of Padlesworth, and an estate called 'Poyntons,' another in Egerton called Field Farm and Wardens, and the manors of Colbridge*, and "Byndwardsmarsh in Iwade," granted to him in the 2nd year of Edw. VI.†

* Hast. v. 401.

† *Orig. ejus anni*, pt. ii. 98.

Nearly sixty names remain in the list of persons affected by the disgavelling Acts. It would obviously be impossible in the limited space of a short treatise to give even references to the records where the lands disgavelled in each instance are described in some cases with such minuteness and accuracy. It is sufficient to repeat that the desired knowledge is only to be obtained by consulting in each case the inquisitions *post mortem*, the grants by letters patent and licenses of alienation contained in the *Originalia*, Patent Rolls, and others easily accessible. The object of

the few notes and remarks on the names in the lists preceding and following is to indicate in some slight degree the amount of information, valuable to the owners of land in Kent, which is there contained.

We may now proceed to mention the names remaining in the lists of 31 Hen. VIII. and 2 and 3 Edw. VI., with a few references to the most obvious sources of information respecting the lands affected.

II. Persons whose lands were disgavelled by the Act 31 Hen. VIII. c. 3, alone.

1. Thomas, Lord Borough.

He was of Aston-Lodge, or Orkesden, in Eynsford and Lullingstone; he succeeded to the family estates in 20 Hen. VIII., and in the year following was summoned to Parliament as Lord Borough, or Burgh, as the name is variously spelt* under "the manor of Brookland." Besides the estates above mentioned, and those in Lenham, Thurnham, and Otterden, we find that he held lands in the hundred of Somerden which were held by ancient knight-service. An entry in the Feodary of Kent notes the fact that "in Somerden hundred are no lands held by knight-service (from the time of the compilation of the Book of Aid, &c.), except those in the tenure of Lord Borough." This appears to refer to the manor of Bowzell in Chidingstone. It should be noticed that Penshurst and some other ancient knight-service manors are there described under the hundred of *Westerham*.

* Hast. ii. 432, and viii. 385.

2. Sir Edward Boughton.

By grant from the King, dated Jan. 30, 1531, and enrolled among the records of the Augmentation Office, he acquired his estates in Plumsted, and others described in his inquisition *post mortem* taken in 4 Edw. VI. †

In 33 Hen. VIII. he aliened to Sir Martin Bowes an

† *Orig.* 20 Hen. VIII. 49.

estate in Plumsted[s]. He was owner of much land in Woolwich, including the manor of Southall, described in the Book of Aid and the Feodary of Kent, and 342 acres of land appertaining to it in later times (though at the Conquest it contained but 63 acres according to Domesday Book)*. This estate was in his ownership in 31 Hen. VIII. He purchased from Sir Martin Bowes, in 33 Hen. VIII., a mansion, wharf, and parcels of land in Woolwich containing about 50 acres of arable, marsh, and wood †.

* Hast. i. 449.

† Pat. Rot. 33 Hen. VIII. pt. vii.

3. Sir John Champneys, of Bexley ‡.

‡ Philip. 252.

4. George, Lord Cobham[t] ‖.

‖ Hast. ii. 174.

5. Thomas, Lord Cromwell.

Cromwell, Earl of Essex, the "Chief Secretary and Vicar-General" of Henry VIII., received several grants of monastery lands before this disgavelling Act. His attainder and execution for treason in the July following render it easy to find out the description of these estates, very exact records being kept of the lands which were thus forfeited to the Crown. Among them were the manors and lands belonging to the suppressed priory of Mottenden in Headcorn §, and many other lands, most of which were distributed among the other great landowners whose names appear in the disgavelling Acts.

§ *Orig.* 30 Hen. VIII. 47.

6. Edmund Fetiplace, of Lid.

He died in 33 Hen. VIII. seised of the manor of New Langport, with 56 acres of land pertaining to it, with

[s] Described Hast. ii. 210, and there said to have been granted to him in the same year.

[t] For his estates see, *inter alia*, Hasted, iii. 413, and references there made; the grant of Bury Court and other lands to him, *Orig.*, 33 Hen. VIII., pt. iii. 54; the Act 31 Hen. VIII. c. 13, and the inquisition on his death in 4 and 5 Ph. and Mary.

a chapel and 200 acres of arable, 400 acres of pasture, 200 acres of meadow "called Sexmanshill in East Waston, Newland, Promehill, Old Romney, and Lid, with certain lands in Brookland which belong to the manor of Aldington," all which were inherited by his son, John Fetiplace, according to the inquisition taken on his death. An estate in Farnborough was granted to him in the year following the disgavelling Act.

7. Sir John Fogge, of Repton *.

8. Sir Christopher Hales, of Eastwell †.

He had acquired before the disgavelling Act of 31 Hen. VIII., among other estates of various tenures (many being held by castleguard rents of Dover Castle), the manor of Wingate in Littleborne, with 95 acres of arable, 50 acres in Maidstone, with houses, orchards, &c.; the manor of Ores, or Grays, in Chislet, with 220 acres; Gore in Upchurch, with 200 acres; St. Alban's Court, with 94 acres in Newington, manors and large estates in Eastwell and Seaton, a messuage and lands belonging to St. Augustine's Abbey, near Canterbury, with others in Adisham ‡.

By the Act 28 Hen. VIII. c. 50 he acquired "the manor of Howfield with its appurtenances in Chartham, Thanington, Harbledown, and elsewhere, and in any place between any part of the river extending from Wye to Canterbury, and the highway extending from Boughton under Bleane to the parish church of Harbledown, belonging to the suppressed priory of St. Gregory in Canterbury," including four meadows in Thanington demised to the said Sir C. Hales by the said prior, and 9 acres in St. Giles' Mead in Westgate, Canterbury, and a croft with 6 acres in St. Dunstan's by the Westgate, all which premises were granted to the said Sir C. Hales to hold *in capite* by fealty only.

* Hast. vii. 553.

† Hast. vii. 403.

‡ *Orig.* 30 Hen. VIII. 31.

He had many other estates in Canterbury and elsewhere granted to him *after* the disgavelling Act. He died in 33 Hen. VIII., leaving co-heiresses, whose estates are enumerated in the inquisition *post mortem*.

9. Thomas Hardres, of Hardres Court *. * Hast. ix. 305.
10. Sir Percival Hart [a].
11. Henry Hussey †. † Hast. v. 409.
12. Edward Isaac ‡, of Patrixborne. ‡ Philip. 267.

By the inquisition taken on his death in 17 Eliz. it appears that he died seised of manors and lands in Adisham, Bekesborne, Bishopsborne, Boughton under Bleane, Ickham, Sturry, and Westbere, most of which had come to him by inheritance before the disgavelling Act of Hen. VIII.

13. Godfrey Lee, of Delce §. § Hast. iv. 170.
14. Edward Monins, of Waldershare.
15. Thomas Roydon, of East Peckham.
16. Reginald Scot, of Smeeth.
17. Anthony Sondes, of Throwley ‖. ‖ Hast. vi. 451.
18. Edward Thwaites ¶. ¶ Hast. vii. 280.
19. William Waller **, of Groombridge. ** Hast. iii. 279, 283.
20. William Whetenhall.
21. Sir Thomas Willoughby, of Chidingstone.
22. Andrew, Lord Windsor.

Although it would not be possible here to furnish a description of all the estates affected by the Act of 1548, it will be apparent from the list subjoined that they were even more numerous than those of which the tenure was changed by the sweeping Act of 31 Hen. VIII. Excluding the twelve persons, who have been already mentioned as

[a] See the Patent Roll for 32 Hen. VIII. pt. v., to which Hasted appears to refer, vol. ii. p. 100; *Originalia*, 31 Hen. VIII. pt. ii. p. 291, and the *Inq. post mortem* of Sir P. Hart in 22 Eliz.

included in the operation of both acts, we have the following list remaining:—

III. Persons whose lands were disgavelled by the Act of 2 and 3 Edw. VI. alone:

1. Thomas Argal, of East Sutton [x].
2. Sir George Blage.

He died in 5 Edw. VI. holding the estates of Goulds Chantry at Maidstone, and the lands of Stampitt's Chantry in Darent and Dartford, these latter containing about 120 acres. The fields belonging to Gould's Chantry are named in the inquisition. Hasted gives an inaccurate account of these estates, vol. ii. 376, and iv. 296.

3. Christopher Bloor [*], of Rainham.

[*] Hast. vi. 9.

4. Sir Martin Bowes, of North Cray.

He purchased the manor and advowson and thirty houses in North Cray by royal license, in 38 Hen. VIII., of Sir Roger Cholmley before mentioned. By other grants in the same reign he acquired the manors of Rucksley and Hodsall, and Haliwell in Ash [y]; and, according to his inquisition *post mortem*, taken in 8 Eliz., he died seised of the estate of Blackfern in Bexley, with more than 400 acres of land in Bexley, and the hamlet of Welling.

5. John Colepepper, of Aylesford.
6. Thomas Colepepper, of Aylesford.
7. Thomas Colepepper, of Bedgebury [z].

[x] For his disgavelled lands see *Orig.* 36 Hen. VIII. pt. vi. 21, and his *Inq. post mortem*, dated 6 Eliz. He held the seats of Kenchill, Godden and Morgieu in Tenterden, and lands there called Kenchill and Howsney, in that parish and in Ebeney, the manor of East Sutton, a wood called East Sutton Copse, the manor, &c., of Densted, houses and lands in Chartham, and other lands therein described. Hast. vii. 211, 305.

[y] *Orig.* 31 Hen. VIII. i. 157, and 35 Hen. VIII. v. 23.

[z] Hasted, vi. 78, 80. Grant of Combwell Priory with manors and lands in Combwell, Lesthurst, Hook, and Coldred, 29 Hen. VIII. (Ellis) Dugd. *Monasticon*, vi. 313.

8. William Colepepper.

9. Richard Covert, of Slaugham (Sussex).

10. Stephen Darrell, of Horsmonden.

11. Thomas Darrell, of Scotney.

These Darrells were brothers, sons of T. Darrell, Esq., of Scotney. In 36 Hen. VIII. a grant was made to S. Darrell of three houses and lands in Horsmonden *, to hold by the service of one-twentieth part of a knight's-fee. Two years afterwards we find a license of alienation for T. Colepepper of Bedgebury to sell to the Thomas and Stephen Darrell, mentioned in this list, his manor with land and woods in Chingley and Goudhurst "in le Wild of Kent," and other tenements lately belonging to Boxley Monastery, dissolved [a].

* Hast. v. 314.

12. Herbert Finch,

13. Sir John Gate, of Whitstaple.

(He was attainted for joining in Wyatt's rebellion; see under the name of Thomas, Lord Cromwell, *ante.*) "He was a great dealer in the suppressed religious houses [b]."

14. Thomas Harman, of Crayford.

15. Sir George Harper, of Sutton Valence.

A grant was made to him in 33 Hen. VIII., of Henshurst in Cobham, and certain lands belonging to the White Friars in Canterbury [c].

16. Peter Hayman.

17. Thomas Hendley.

18. Sir Walter Hendley, of Cranbrook.

The extent of the possessions of Sir W. Hendley at the date of the disgavelling Act of Edw. VI., and the fact that they were dispersed among co-heiresses shortly after that

[a] Rot. Pat. 38 Hen. VIII. pt. xii.; *Orig.* 36 Hen. VIII. pt. v. 91.

[b] Hast. v. 166. See *Orig.* 38 Hen. VIII. pt. iii. 33.

[c] See Tanner's *Notit. Monast.* under 'Leeds Priory,' and Hast. iii. 426.

date, renders it worth while to give somewhat fuller references to the most important of the records relating to his estates, than is possible in the case of the other landowners in this list.

By the inquisition taken on his death, in 6 Edw. VI., it appears that he died seised of the manors and lands following, which had been in his ownership at the passing of the disgavelling Act of 1548.

In 33 Hen. VIII. he purchased of Sir Thomas Wyatt the manor of Great Maytham with its lands in Rolvenden, and the Ferry House there, and 230 acres of arable in the same parish, described in the deed more particularly, and the estate of 'Farningham' in Cranbook, containing 100 acres of arable land lying all together. In the year before his lands were disgavelled, he purchased of J. Cheyney his manors and lands in Craythorne (Hope) and Coldred.

Between the years 31 and 35 Hen. VIII. he acquired by grants from the Crown the manor of Angley in Cranbrook, with 360 acres of land there, and Algarfields (78 acres) in Kenardington; the manor and rectory of Ebeney, with two houses and over 800 acres of arable and marsh in Ebeney, Stone, and several other parishes; estates called Oisterland and Derland in the Isle of Oxney, containing 313 acres of marshland; the manors of Elmstone and Overland, with their appurtenances in Preston, Ash, Wingham, and Staplehurst, and the advowson of Elmstone; the manor of 'Haringbrook' with its lands in Woodchurch and Tenterden, and others called Uplands in Haringbrook; Northslademarsh and Northslade, with lands formerly belonging to the Abbey of Beaulieu in Lid, and 60 acres in Cowles Marsh at Appledore. In the year preceding the disgavelling Act he further acquired

an estate in Maidstone, which is described in the inquisition with much minuteness, viz.:—

"Shales Court, lately belonging to Sir T. Wyatt, and Mr. Hooker's house in Maidstone (Stone Street) with its garden, and two acres in Littlehales Croft, and 94 acres at Stone Rock, and Culter's Croft (6 a.) and two fields, called Shales-fields, and containing 31 a. and 26 a. respectively, 18 a. in 'Sharnold Street,' 26 a. in Combe, and 16 a. by the Hayle, and Ludwycke's lands, with other lands and tenements in Maidstone, Loose, and Shales Court, all lately in the hands of Sir T. Wyatt[d]."

Elisabeth Fane, one of his three co-heiresses, appears to have inherited this estate in Maidstone; she died in 9 Eliz., and was succeeded in it by Sir W. Walker, her son *. Anne Covert, another of the daughters, inherited from Sir W. Hendley the manor of Ebeney with 600 acres of land appertaining to it in several parishes, the reversion of 140 acres of marsh land in Stone, called Courtbrook and Courtlees, the estate of Cranes in the same parish, the manors of Craythorne and Silwell (Newchurch), and the reversion of the rectory of Ebeney. She died in the twenty-second year of Elizabeth. The family seat at Coursehorne appears to have been entailed on heirs male.

* Hast. iv. 300.

19. Sir Henry Isley, of Sundridge.
20. Thomas Lovelace, of Bayford.
21. John Mayne, of Biddenden †.
22. Walter Mayne, of Staplehurst.

† Hast. v i. 133.

[d] See the Survey of the possessions of Maidstone taken in 1597, and Gilbert's "Antiquities of Maidstone," p. 63, where the position of some of the lands of Sir W. Hendley is indicated.

Hasted's account of his lands there is inaccurate (vol. iv. 300), as may be seen by reference to the same work, p. 78, and elsewhere. For other notices of Sir W. Hendley's lands, see Pat. Rot. 1 Edw. VI. 3, 5, and 2 Edw. VI. 3; *Orig.* pt. i. 32 Hen. VIII. 104, and 37 Hen. VIII. pt. iii. 12.

* *Lennard* v. *Sussex*, *suprà*.

23. Reginald Peckham *, of Yaldham.
24. Thomas Roberts, of Glassenbury.
25. Robert Rudstone, of Wittersham.

He was of Broughton Monchensie. Having engaged in Wyatt's rebellion his lands were forfeited, but were restored by Act of Parliament in the first year of Elizabeth †.

† Hast. v. 340.

‡ Ibid. 83, 85.

26. Sir Robert Southwell ‡, of Mereworth.
27. Sir Humphrey Style, of Beckenham.
28. John Tufton, of Hothfield.

|| *Doe d. Bacon* v. *Brydges*, *suprà*.

29. William Twisden ||, of Chelmington.
30. Sir Edmund Walsingham, of Scadbury.

He died in 4 Edw. VI., and was succeeded by his son, Thomas Walsingham, in all his estates held of the Crown by knight-service, as appears from his inquisition *post mortem*. Among these were the manors and lands alienated to him by Sir Robert Southwell in West Peckham, and Swanton, Mereworth, Pembury, East Peckham, and Hadlow *. It will perhaps illustrate the mode of ascertaining the disgavelled lands to shew the change of ownership within a few years of an important estate in East Peckham, which had been granted to Sir T. Wyatt in 31 Hen. VIII. [f]

Without entering on the question of the original tenure of these lands, which seem to a great extent to have formed part of the demesnes of the priory of Christchurch, we see

* Hil. 35 Hen. VIII., Mem. Roll. 17.

[f] He was attainted and executed in the first year of Queen Mary's reign, for his share in Wyatt's rebellion: see under Thomas, Lord Cromwell, *suprà*. Some of his estates were granted to Sir John Baker and others, but a considerable portion was restored to his son, William Isley, by letters patent in 1 and 2 Ph. and M. dated March 8, where their description may be found. Some of his disgavelled lands are mentioned in the case of *Lennard* v. *Sussex*, *suprà*. See also *Orig.* 32 Hen. VIII., pt. i. 90.

by the records now cited that at any rate they were in the ownership of Walsingham during the years 1548, 1549.

In the Patent Rolls of 31 Hen. VIII. we find the grant to Wyatt, followed in 35 Hen. VIII. by the inquisition on his death, describing the lands as then inherited by Sir T. Wyatt, his son. In the Patent Rolls for the year of his death[g], occurs a license to alienate to George Multon, of Ightham, "all those lands and tenements (describing them) belonging to the manor of East Peckham, and the manor and all the lands lately demised by the Prior of Christchurch," &c. Two years afterwards another license of alienation in the Patent Rolls shews, that G. Multon aliened to Sir Edmund Walsingham "all those lands and tenements in East Peckham" (describing them as before) in fee. Then in the year following the disgavelling Act, on the death of Sir E. Walsingham, his son and heir receives livery of the same lands as part of his father's inheritance.

It is of course only possible here to give an outline of the contents of the records in such cases[h].

31. Thomas Watton, of Addington.

32. Thomas White.

The lists here given, though barely furnished with notes and references, show that a very large proportion of the customary lands of Kent were made, and in fact are now, descendible at common law. The possessions of nearly seventy of the principal landowners must necessarily have spread into every part of the county; when, therefore, we consider how great a proportion of the whole land in Kent was never gavelkind at all, being held originally in

[g] Pat. 35 Hen. VIII. pt. ii. [h] See also Kent. Arch. Soc. v. 246.

a superior tenure, and on the other hand how great a proportion of the ancient socage lands have been actually disgavelled by the comprehensive Acts of Parliament above cited, it certainly seems remarkable that the impression should have prevailed in the last century, "that almost as much land was gavelkind as before the passing of those acts," and in our own time, that all except an insignificant part of the land is held in that tenure.

While the records of the county were difficult and expensive of access, it was natural that great stress should have been laid on the common presumption concerning land in Kent; it was, however, certain that sooner or later it would be found that the presumption is liable to break down, and that very much less land is there descendible to heirs male by the custom, than has been lately supposed. It would be tedious but not impracticable to mark out, as in a register, the tenure of each estate in the county, to enumerate the lands which remain under the influence of the custom, allowing for those cases where the evidences of identity have been really lost.

Various plans have been proposed for removing the inconveniences of doubtful tenure in Kent; among others, a general abolition of gavelkind has been recommended, and failing this, a power to be given to owners beneficially entitled in fee of disgavelling by a deed enrolled. Whether either of these plans should in the end be adopted or not, it seems for the present to be useful to remember, that in every case of dispute the real tenure can be discovered without undue reliance on a presumption, which may, and often does fail, when disturbance of title is most to be avoided.

From the time when the apparatus of the feudal system for the preservation of the law of tenures was abandoned,

it has become more difficult to trace each dealing with land by means of the public records. The object of the foregoing chapters has been to shew, however imperfectly, that abundant materials are there to be found for a history of the tenures of Kent; much more exact and valuable information may of course be given on the same points by persons who have more practical experience in dealing with the same materials; but if it is shewn that the tenure of each estate can be demonstrated down to the period of the disgavelling Acts, something will have been gained for modern and practical purposes.

APPENDIX.

LIST OF LANDS HELD BY ANCIENT KNIGHT-SERVICE IN KENT.

(Taken from Domesday Book, the Book of Aid, and the Feodary of Kent.)

Parish.	*Manors.*
Acrise	Acrise.
Addington	Addington.
Aldington	Aldington.
Alkham	Alkham.
,,	Everings.
,,	Hallmead.
,,	Hopton.
Allington	Allington.
Ash	Fleet.
,,	Goldston.
,,	Gosshall.
,,	Gurson.
,,	Lees.
,,	Overland.
,,	Twitham.
Ash (by Wrotham)	St. John's Ash.
,,	North Ash.
,,	South Ash.
,,	Scotgrove.
Ashford	Ashford.
,,	Esture.
,,	G. Repton.
,,	L. Repton.
,,	Wall.
Ashurst	Ashurst.
,,	Buckland.
Aylesford	Aylesford.
,,	Cossenton.
,,	Eccles.
,,	Tottington[a].
Badlesmere	Badlesmere.
,,	Woods-court.
Barfreston	Barfreston.
,,	Hartanger.
Barham	Barham Court.
E. Barming	E. Barming.
,,	St. Helen's.
W. Barming	Jennings-Court.
,,	W. Barming.
Beckenham	Beckenham.
,,	Foxgrove.
,,	Langley Park.
Bekesbourne	Bekesbourne.
Benenden	Benenden.
,,	Combden.
,,	Hemsted.
Bethersden	Eytchden.
Betshanger	Betshanger.
Bexley	Bexley.
Bicknor	Bicknor.
Bilsington	Bilsington.
Birchington	Garling.

[a] Tottington was part of the honour of Crevequer, and held *in capite Inq. p. mortem* T. Palmer, 23 Hen. VII. Eccles was part of the Duchy of Lancaster; it was held of the duchy by knight-service by Edward Poynings, who died 14 Hen. VIII.

Parish.	*Manors.*
Birling	Birling.
Bishopsbourne	Bishopsbourne.
Blackmanstone	Blackmanstone.
Bleane	Bleane.
,,	Butler's Court.
,,	Well Court.
Bonnington	Bonnington.
,,	Kennetts.
,,	Shingleton.
Boughton-under-Bleane	Boughton.
,,	Boughton-Court.
Boughton-Aluph	Boughton Aluph.
,,	Seaton.
,,	Wilmington.
Boughton Malherbe	Bewley.
,,	Boughton Malherbe.
Boughton Monchelsea	Boughton Monchelsea [b].
Boxley	Boxley.
,,	Overhill.
,,	Wavering.
Brabourne	Aldglose.
,,	Brabourne Lees.
,,	Bircholt.
,,	Hampton.
,,	Park Farm.
,,	Pounds.
Brasted	Brasted.
Brenchley	Barnes.
,,	E. Bokinfold.
,,	Chekeswell.
,,	Copgrave.
,,	Mascalls.
,,	Parrocks.
Bridge	G. and L. Barakers.
Bromley	Bromley.
,,	Simpsons.
,,	Sundridge.
Broomfield	Broomfield.
Buckland (near Dover)	Buckland.
Buckland (near Faversham)	Ringley Wood [c].
,,	Buckland.
Burham	Burham.
Burmarsh	Abbot's Court.
,,	Tringstone.
Capel	Coldham.
Chalk	E. and W. Beccles.
Challock	Otterpley.
Charing	Charing.
,,	E. Lenham.
,,	New Court.
,,	Raywood.
,,	Stilley.
,,	Pettes.
Charlton	Charlton.
,,	Wricklesmarsh.
Chart Sutton	Chart Sutton.
Chartham	Horton.
,,	Shalmsford.
Chatham	Sharsted.
,,	Snodhurst.
,,	Wadeslade.
Chelsfield	Chelsfield.
,,	Goddington.
Cheriton	Ackhanger.
,,	Caseborne.
,,	Cheriton.
,,	Enbrooke.

[b] Boughton Monchelsea and Palsty Court, with 220 acres of land, held by Catherine Peckham of the King *in capite*. Vide her inquisition *post mortem* 7 Hen. VII.

[c] Ringley Wood. See *Inq. p. mortem* of Thomas Froguall, 20 Hen. VII. That it is a complete manor, see a similar inquisition on death of Henry Lee, 30 Hen. VIII.

Parish.	*Manors.*
Cheriton	Oaks.
,,	Swetton.
,,	Sweet Arden.
Chevening	Chevening.
,,	Chipstead.
,,	Morant's Court.
Chilham	Chilham.
,,	Esture.
,,	Herst.
,,	Shillingheld.
,,	Youngs.
Chislet	Chislet.
,,	Grays.
Cliffe (by Rochester)	Ballards.
,,	Batts.
,,	Cerdons.
,,	Mortimers.
,,	Northope.
,,	Southwold.
W. Cliffe	Solton.
,,	W. Cliffe [d]
Cobham	Henhurst.
,,	Mount.
Coldred	Coldred.
,,	Popshall.
Cowling	Cowling.
Cranbrook	Buckhurst.
,,	Copton.
,,	Sissinghurst.
,,	Stone.
Crayford	Crayford.
,,	Hoobery.
The Crays	Foots Cray.
,,	Grays.
,,	Kitchen Grove.
,,	North Cray.
The Crays	Ruxley.
,,	St. Mary's Cray.
,,	Paul's Cray.
Crundale	Hadlow.
,,	Tremworth.
,,	Vanne.
Cudham	Cudham Castle.
,,	Mares Place.
Cuxton	Beresse.
,,	Cuxton.
,,	Wicham.
Dartford	Dartford.
,,	Portbridge.
Davington	Burdfield.
,,	Davington.
,,	Fishbourne.
Denton	Denton.
,,	Tappington.
Deptford.	Deptford.
,,	Saye's Court.
Detling	E. and W. Court.
Ditton	Brampton.
,,	Ditton.
,,	Sifleston.
Doddington	Down-Court.
,,	Sharstead.
Dymchurch	Eastbridge.
Eastling	Arnolds.
,,	Diven.
,,	Huntingfield Court.
,,	North Court.
,,	Rolles [e].
Eastry	St. Alban's Court.
,,	Shingleton.
Eastwell	Eastwell.
Elham.	Elham.

[d] West Cliffe. *Inq. p. mortem* Thomas Cobham, 20 Hen. VII.

[e] In 20 Edw. III. held by Lady De Campaniâ as one fee: in the reign of Henry VIII. by A. Aucher and Greenstreet; described as "lands and woods in Eastling called Rolles, once parcel of Dyve Court, and help by castleguard rent of Dover Castle."

Parish.	*Manors.*
Elham	Mount.
Elmsted	Elmsted.
,,	Southligh.
Eltham	Eltham.
,,	East Horne.
,,	Well Hall.
Erith	Erith.
Eynsford	Aston Lodge.
,,	Eynsford.
,,	South Court.
Eythorne	Elmton.
W. Farleigh	W. Farleigh.
,,	Totesham Hall.
Farnborough	Farnborough.
,,	Farnborough Hall.
Farningham	Chartons.
,,	Chimmans.
,,	Farningham.
Faversham	Faversham.
Fawkham	Old and New Fawkham.
Folkstone	Folkstone.
,,	Tirlingham.
Frindsbury	Eslingham.
Frinsted	Frinsted.
,,	Fokeham[f].
,,	Meriam's Court.
,,	Yokes Court.
Gillingham	Gillingham.
,,	Grange.
,,	E. and W. Court.
Goodnestone	Goodnestone.
,,	Poplar Court.
Graveney	Graveney.
Gravesend	Gravesend.
Gunston	Gunston.
Hadlow	Canstons.
,,	Crombery.
,,	Peckhams.
L. Halling	Langridge.
Halsted	Halsted.
Ham	Ham.
Harbledown	Poldhurst.
L. Hardres.	Diggs Court.
,,	Lower Hardres.
Upper Hardres	U. Hardres.
Harrietsham	E. Farborne.
,,	W. Farborne.
,,	Harrietsham.
,,	Harbilton.
,,	Marley Court[g].
Hartley	Hartley.
Harty (Isle of)	Champion Court.
,,	Longhouse.
,,	Moat.
,,	Norton.
,,	Saye's Court.
Hastingleigh	Hastingleigh.
Hawkinge	Bilcherst.
,,	Combe.
Hever	Hever.
Higham	Littlechurch.
,,	L. and G. Oakley.
High Halton	Tiffenden.
Hoo St. Warburgh	Hoo.
Horsmonden	Horsmonden.
Horton Kirby	Bermondsey.
,,	Horton Kirby.
Hothfield	Hothfield.
Hougham	Hougham.
,,	Hougham Court.
,,	Maxton Court.

[f] Fokeham. Part of St. Augustine's barony: *Inq. post mortem* of James Digge, 28 Hen. VIII.

[g] Harrietsham. Hugh de Gerunde had one knight's-fee here in 20 Edw. III., which in the reign of Henry VIII. was held by Sedley, "et patet per Antiquas recordas in Scaccario quod tenetur de Rege in capite ut de Curiâ de Redlevet."

Parish.	*Manors.*
Houghan	Siberston.
Hunton	Bensted.
,,	Hunton.
Hurst	Goldenhurst.
,,	Hurst.
Ickham	Apulton.
Ifield	Hever Court.
Ightham	Ightham.
,,	Moat.
,,	St. Cleres.
Kemsing	Kemsing.
Kenardington	Kenardington.
Kennington	Kennington.
Keston	Keston.
Kingsdown	Chepsted.
,,	Chepsted Hever.
,,	Kingdown.
,,	Maplescombe.
Kingstone	Kingstone.
Knockholt	Knockholt.
Knolton	Knolton.
Lamberhurst	Lamberhurst.
E. Langdon	Langdon.
,,	Pising.
W. Langdon	W. Langdon.
Langley	Brising.
,,	Langley.
Leaveland	Leaveland.
Lee	Lee.
Leeds	Leeds.
Lenham	Down Court.
,,	Lenham.
,,	Middle Shelve.
,,	West Shelve.
Lewisham	Lewisham.
Leybourne	Leybourne.
Littlebourne	Garrington.
,,	Littlebourne.
,,	Walton.
Littlebourne	Wingate.
Luddenham	Luddenham.
Luddesdown	S. Buckland.
,,	Luddesdown.
Lullingstone	Lullingstane.
,,	Lullingstone [h].
,,	Peyforer.
Lydden	Cocklescombe.
,,	Perryn.
,,	Swanton.
Lyminge	Ligh Court.
,,	Sibton.
,,	Lympne.
Lympne	Berwick.
,,	L. Wilmington.
,,	Otterpoole.
,,	Street.
Maidstone	Maidstone.
,,	Mote.
,,	G. Buckland.
W. Malling	W. Malling.
,,	Clements.
(St. John's) Margate	Dene.
Mereworth	Mereworth.
,,	Swanton Court.
,,	Yokes Place.
Merston	Ballards.
,,	East Hall.
,,	Hurst.
,,	Hurst Hall.
,,	Merecourt.
,,	Merston.
Midley	Midley.
Milsted	Milsted.
Milton	Milton.
Milton (by Gravesend)	Milton.
Minster	Minster.

[h] Lullingstone, with "Resse, Fokys-Peyforer, and Cockhurst," held of the king *in capite* by military service by William Peckham.—*Inq. post mortem* 5 Hen. VII.

Parish.	*Manors.*
Minster	Thorne
,,	Spensers.
,,	Waschester.
Molash	Witherling.
L. Moneyham	L. Moneyham.
Monks Horton	Monks Horton.
Murston	Murston.
Nackington	Heppington.
,,	Hethenland[i].
,,	Nackington.
,,	Sextries.
,,	Staplegate.
Nettlested	Hylth Park.
,,	Nettlestead.
Newchurch	Organers.
,,	Silwell.
Newenden	Lossengham.
,,	Newenden.
Newington	Newington Bell-house.
,,	Newington Bertram.
,,	Overland.
Newington (by Sittingbourne)	Newington.
Newnham	Champion's Court.
,,	Sholand.
Nonington	Ratling.
,,	Soles.
Northbourne	L. Betshanger.
,,	Finglesham.
,,	Northbourne.
,,	Tickenhurst.
,,	West Court.
Northfleet	Ifield Court.
,,	Northfleet.
Norton	Norton.
Norton	Provenders.
,,	Stuppington.
Nurstead	Nurstead.
Oare	Oare.
Offham	Offham.
,,	Snodbeane.
Orleston	Orleston.
Orpington	Mayfield Place.
Ospringe	Cokes[k].
,,	Elvyland.
,,	Putwood.
,,	Ospringe.
,,	Queen Court.
Otford	Danehull.
,,	Otford.
,,	Sergeants Otford.
Otham	Otham.
Otterden	Herst.
,,	Otterden.
Oxney	Oxney.
Padlesworth	Padlesworth.
Patrixbourne	Higham Wood.
,,	Patrixbourne.
W. Peckham	Oxenhoath.
,,	W. Peckham.
Penshurst	Penshurst.
,,	Yensfield.
Petham	Swardling.
Pevington	Malmains.
,,	Pevington.
,,	Shurland.
,,	Surrenden.
Pluckley	Roting.
Plumstead	Plumstead.
Postling	Postling.
Preston (by Wingham)	Preston.

[i] "James Hales was tenant (35 Hen. VIII.) of forty-two acres called Hethenland; and a house and lands called Staplegate; and lands called Natington, containing forty-three acres by estimation."—*Petit's Notes on Feodary of Kent.*

[k] Cokes. A tenement or messuage in Ospringe held of the king *in capite* by knight-service.—*Inq. post mortem* Rich. Cocks, 16 Hen. VII.

Parish.	*Manors.*
Preston (by Faversham)	Perry Court.
,,	Westwood.
Reculver	Reculver.
Ridley	Ridley.
Ringwold	Ringwold.
Ripple	Detling.
,,	Ripple Court.
River	Archer's Court.
,,	Kearsney Abbey.
,,	River.
Rochester	G. Delce.
,,	L. Delce.
,,	Nashenden.
Rolvenden	Frensham.
,,	Forsham.
,,	Halden.
,,	Keinsham.
,,	Lowden.
,,	L. Maytham.
,,	G. Maytham.
Ruckinge	Poundhurst.
,,	Ruckinge.
,,	Westberies.
,,	Westgate.
Ryarsh	Ryarsh.
(St. Lawrence) Ramsgate	Ossunden.
,,	Nether Court.
,,	Upper Court.
(St. Mary's) Hoo	Wimonden.
Saltwood	Brockhull.
,,	Saltwood.
Sandhurst	Sandhurst.
Sarre	Sarre.
Seale	Seale.
Sellindge	Ealdham.
,,	Haringe.
,,	Sellindge.
Sellindge	Tattenham.
,,	G. Wilmington.
Selling	Bewper.
,,	Selling.
Sevington	Hawkswell.
,,	Sevington.
Sheldwich	Sheldwich.
Sheppey (Isle of)	Norwood.
,,	Stampits.
Shipborne	Shipborne.
Shoreham	Champs.
,,	Cockhurst.
,,	Filson.
,,	Halsted.
,,	Preston.
,,	Sepham.
,,	Shoreham.
Shorne	Shorne.
Shoulden	Cottington Court[1].
Sibertswold	Upton Wood.
Sittingbourne (with Milton)	Sittingbourne.
,,	Milton.
,,	Norwood Chasteners.
Smeeth	Evegate.
Snargate	Snargate.
Snave	Snave.
,,	Snavewick.
Snodland	Veeles.
Southfleet	Poole.
Stalisfield	Darby Court.
,,	Stalisfield.
Standford	Shorne Court.
,,	Standford.
,,	Westenhanger.
Stansted	Soranks.
,,	Stansted.

[1] Cottington Court; *vide inq. post mortem* Thomas Barton, 24 Hen. VII.

Parish.	*Manors.*
Stelling	Fryerne Park.
Stockbury	Cowsted.
,,	Stockbury.
,,	Yelsted.
Stodmarsh	Stodmarsh.
Stoke	Tudors.
,,	Malmains.
Stone	Cotton.
,,	Stone.
,,	Stone Castle.
Stowting	Stowting.
Strood	Boncakes.
,,	Goddington.
,,	Strood.
Sturry	Mayston Court.
,,	Sturry.
Sundridge	Sundridge.
Sutton (by Dover)	East Sutton.
,,	Sutton Court.
,,	Sutton Farm.
E. Sutton	Charlton.
,,	E. Sutton.
Sutton-at-Hone	Sutton Place.
Sutton Valence	Sutton Valence.
Swalecliffe	Chestfield.
Swanscombe	Alkardin.
,,	Swanscombe.
Swingfield	Bonnington.
,,	Langdon.
,,	Swingfield.
Tenterden	Godden.
,,	Tenterden.
Teynham	Teynham
Throwley	Throwley.
Thurnham	Addington.
,,	Bimbury.
,,	Addington Cobham.
,,	East Court.
Thurnham	Eynton.
,,	Thurnham.
Tilmanstone	North Court.
,,	South Court.
Tonbridge	Barden.
,,	Dachurst.
,,	Hilden.
,,	South.
Tong	Tong.
Tudely	Tatlingbury.
,,	Tudely.
Tunstall	Tunstall.
Ulcombe	Ulcombe.
Upchurch	Gore.
Waldershare.	Apulton.
,,	Waldershare.
Walmer	Walmer.
Waltham	Ashenfield.
,,	Wadnall.
,,	Whitacre.
,,	Waltham.
Watringbury	Canons' Court.
,,	Westbery.
,,	Watringbury.
Westbere	Haseden.
,,	Hopland.
Westerham	Westerham.
Westwell	Beamston.
,,	Dean Court.
,,	Ripple Court.
,,	Perytown.
Whitfield	Bewsfield.
,,	Linacre.
,,	L. Pising.
,,	Whitfield.
Whitstaple	Cundies-hall [m].
,,	Clowton.
,,	Shourt.
,,	Tangreton.
,,	Whitstaple.

[m] Cundies-hall, with fifty-two acres of demesne, held by William Roper by knight-service; see his *inq. post mortem* 7 Hen. VII.

Parish.	*Manors.*
Wichling	Wichling.
E. Wickham	E. Wickham.
W. Wickham	W. Wickham.
Wickham Breaux	Wickham Breaux.
Wilmington	Wilmington.
Wingham	Wingham.
Wittersham	Owlie.
,,	Palsty Court.
Woodchurch	Place House.
,,	Woodchurch.
Woodnesborough	Grove.
,,	Hammill.
,,	Hammill Court.
,,	Polton.
,,	Woodnesborough.
Woolwich	Southall.
Wormshill	Wormshill.
Wotton	Wickham Bushes.
,,	Wotton Court.
Wouldham	Bewley Court.
,,	Littlehill.
,,	Starkey.
Wrotham	L. Yaldham.
,,	W. Yaldham.
,,	Wrotham.
Wye	Wye.
Yalding	Henhurst.
,,	Ladingford.
,,	Woodfold[a].

[a] Woodfold. "Nota, quod non solvit aliquem redditum (35 Hen. VIII.) et tenetur per servitium militare."—*Petit's Notes on Feodary of Kent.*

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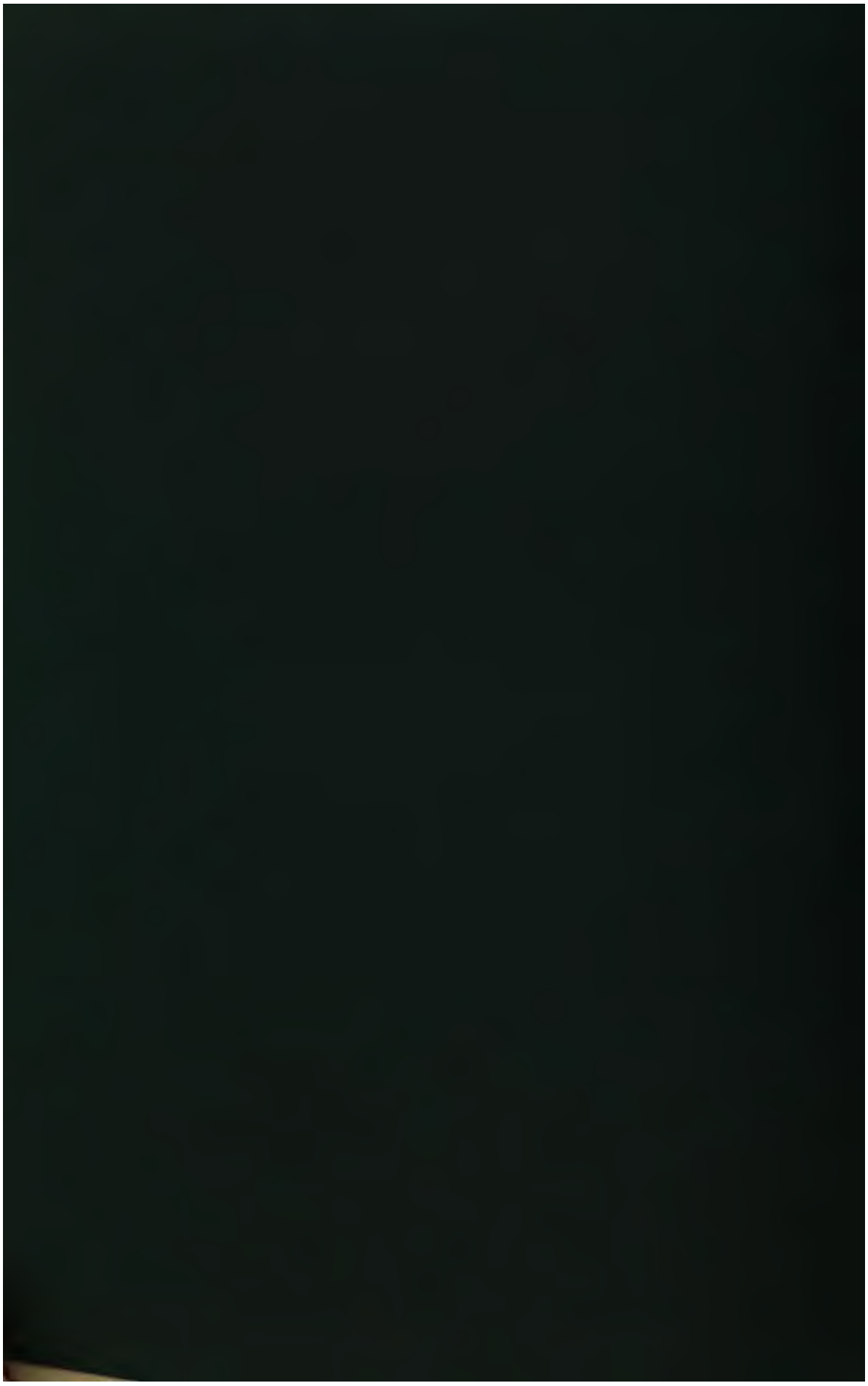
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